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CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 31st July, 2024

No. 13/1/9529-HII(2)-2024/12041.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. **81/2018** dated **30.04.2024** delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

VIJAY KUMAR NAYAK C/O GANESH DUTT SHARMA, HOUSE NO.191, HARMILAP NAGAR, BALTANA, ZIRAKPUR. (Workman)

AND

1. THE MANAGING DIRECTOR, DAINIK BHASKAR CORPORATION LIMITED DWARKA SADAN, 6, PRESS COMPLEX, MP NAGAR, ZONE - I, BHOPAL, (MP).
2. THE GENERAL MANAGER DAINIK BHASKAR CORPORATION LIMITED PLOT NO. 11-12, SECTOR 25, CHANDIGARH.
3. THE EDITOR, THE DAINIK BHASKAR CORPORATION LIMITED, PLOT NO. 11-12, SECTOR 25, CHANDIGARH THROUGH ITS REPORTING AUTHORITY OF THE CLAIMANT. (Managements)

AWARD

1. Vide Endorsement No.13/1/9529-HII(2)-2018/12012 Dated 06.08.2018 the Secretary Labour, Chandigarh Administration has referred the dispute to this Court / Tribunal on the claim application filed by Vijay Kumar Nayak (*here-in-after referred "workman"*) to The Managing Director, Dainik Bhaskar Corporation Limited & Others (*here-in-after referred "management"*) under Section 17(1) of the Working Journalists & Other Newspaper Employees (Condition of Service) and Miscellaneous Provisions Act, 1955 (*here-in-after in short referred "Act 1955"*) in following words :-

"Whether the arrears of revision of pay to Shri Vijay Kumar Nayak, C/o Ganesh Dutt Sharma, House No.191, Harmilap Nagar, Baltana, Zirakpur(Applicant/Claimant) were

(1891)

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to be paid by 1. The Managing Director, Dainik Bhaskar Corporation Limited, Dwarka Sadan, 6, Press Complex, MP Nagar, Zone - I, Bhopal, M.P. 2. The General Manager, Dainik Bhaskar Corporation Limited, Plot No. 11-12, Sector 25, Chandigarh. 3. The Editor, the Dainik Bhaskar Corporation Limited, Plot No. 11-12, Sector 25, Chandigarh through its Reporting authority of the claimant (Respondents) according to the recommendations of the Majithia Wage Board and also as per the direction of the Hon'ble Supreme Court of India under The Working Journalists And Other Newspaper Employees (Conditions of Service) And Miscellaneous Provision Act, 1955 and in compliance of the orders dated 28.04.2015, 12.01.2016, 14.03.2016, 23.08.2016 passed by the Hon'ble Supreme Court of India in CCP No.128/2015 and 129/2015 AND WP (Civil) 246/2011 dated 07.02.2014; if so, to what effect and to what relief he is entitled to, if any ?"

2. Upon notice, the workman appeared through his Representative Shri Sanjay Tangri. Briefly stated the averments of claim statement are that the respondent No. 1 - DB Corp Ltd. (*here-in-after 'management No.1'*), is India's largest newspaper group with 66 editions published in 4 languages. The major newspapers published by the group are Dainik Bhaskar (Hindi daily), Divya Bhaskar (Gujarati daily), DainikDivya Marathi (Marathi daily), Saurashtra Samachar, DB Post (English daily) and DB Star. The claimant (*here-in-after 'workman'*), had joined the management on 09.01.2006 as Compositor (Editorial). The workman had been performing his duties with utmost sincerity and devotion, dedicating 10-11 hours on duty regularly and regardless of his post, he had been performing many duties like preparation of advertisement, news, special editions etc. The hard work and effort put by the workman had been duly appreciated by the management. The Government of India has accepted the recommendations of the Majithia Wage Board on 25.10.2011, for revision of wages and allowances of employees in newspaper establishments and news agencies and notified vide S.O. No.2532(E) dated 11.11.2011 in the Gazette of India. As per the recommendations of the Majithia Wage Board Award, the management falls under Class - I of the Newspaper Establishment as its annual turnover is ₹1,000/- crore and above. The Hon'ble Supreme Court of India in the matter of ABP Pvt. Ltd. & Another Versus The Union of India & Others reported as 2014(3) SCC 327 has rejected various challenges by management of various newspapers to the Majithia Wage Board recommendations. In its judgment, the Hon'ble Supreme Court held that the wages as revised/determined shall be payable from 11.11.2011 when the Government of India notified the recommendations of the Majithia Wage Boards. All the arrears up to March, 2014 shall be paid to all eligible persons in four equal installments within a period of one year from today and continue to pay the revised wages from April, 2014 onwards. The workman has been requesting the managements for balance payment but without any fruitful results. The managements have not paid arrears to the workman till date despite the fact that the recommendations of the Majithia have been upheld by the Hon'ble Supreme Court of India and specific directions have been given by the Hon'ble Supreme Court of India for the implementation of the Majithia Wage Board. As per the recommendation of the Majithia Wage Board, the applicant is entitled to ₹ 24,71,935/- i.e. arrears from 11.11.2011 to 01.05.2018, ₹ 19,62,895/- as interest on arrears @18% per annum, ₹ 1,65,962/- as interim relief from 01.01.2008 to 10.11.2021 and ₹ 62,953/- as LTA total amounting to ₹ 46,63,747/-. The detailed statement of account is attached with the claim statement. Non-payment of arrears thereof to the workman is contemptuous, illegal, mala-fide, in utter violation of judgment passed by the Hon'ble Supreme Court of India. Due to such an arbitrary, illegal, unjust and mala-fide action, rather inaction on the part of the management the workman has suffered immeasurable mental agonies, financial hardship and physical harassment, which deserves to be compensated in terms of money. The managements also deserve to be saddled with heavy and extra-ordinary costs for resorting to unfair labour practice. Prayer is made that :-

- a) The managements may be directed to pay a balance arrears to the workman amounting to ₹ 46,63,747/- ;
- b) The managements may be directed to produce all the records relevant to the case.

- c) The managements may be burden with heavy costs and award compensation to the tune of ₹25.000/- to the workman for mental agonies, physical harassment and financial hardship;
- d) Cost of this claim may be allowed;
- e) To pass such other orders, directions and grant such other relief in favour of the workman, as deemed fit, and proper in the facts and circumstances of the case by this Hon'ble Court.

3. On notice, management No.2& 3 appeared through Shri Bijender Sharma - Representative, who filed memo of appearance on 17.09.2018 and later, on 12.12.2018, filed authority letter on behalf of managements No.1 to 3. Management No.1 to 3 contested the claim statement by filing joint written statement wherein preliminary objections are raised on the ground that the applicant-workman was appointed on 09.01.2006. In accordance with exceptions under Section 2(f) of the Act 1955, the applicant-workman would fall under the supervisory / managerial capacity as he had a team working under him. Further, the applicant-workman does not fall under the definition of working journalists and non-working journalists by nature of his designation as well as nature of work hence he is entitled for recommendations of the Majithia Wage Board. The applicant-workman falls under the category of supervisory / managerial capacity, as he alone was responsible to manage the team assigned. The applicant-workman does not fall within the definition of 'workman' under Section 2(s) of the ID Act. Hence, the proceedings are not required to be proceeded further before this Court. The claim petition (here-in-after 'claim statement') statement is liable to be dismissed on account of mis-joinder of necessary party as the alleged service rendered by the claimant-workman with the answering management i.e. Assistant General Manager / Senior Manager, H.R. (who has not been impleaded as party in the present claim statement). The procedure under the scheme of the Act, aggrieved employees seeking to recover any amount due under the Act is required to first move an application before the State government. As per Rule 36 of the Act, such an application is required to be made in prescribed Form 'C' addressed to the Secretary to the State Government, along with the details of the amount claimed, preceded by a 15 days prior notice regarding payment to the concerned newspaper establishment. In this case, no such application along with the details of the amount claimed, much less in the prescribed format was made to the Secretary of the State Government. No 15 days prior notice was issued by claimant-workman to the management as required under Rule 36 of the Act. Thus, in the absence of fulfilling the conditions precedent for initiating action under Section 17 of the Act, legally no proceedings could have been initiated at the instance of the management against the claimant-workman. Hence, the proceeding in question is void ab-initio. The alleged demand of amount of the applicant-workman is also hopelessly time barred. It is well settled law that a civil suit does not lie after the expiry of 3 years of the cause of action. The employees who have signed 20(J) of the Majithia Wage Board recommendations of their own account are not entitled for Majithia Wage Board recommendations and henceforth the claim is liable to be dismissed. The management has fully complied with the provisions of the Majithia Wage Board issued by the Central Government under notification dated 11.11.2011. Mr. Vijay Kumar Nayak had already received the wages as per para 20(j) of the Majithia Wage Board recommendations. The claimant-workman has chosen / opted to retain his existing wages and existing emoluments as per para 20(j) of the Majithia Wage Board at his own voluntarily. Now nothing is payable to the claimant as he had already received wages according to the option opted by him in para 20(j), which is reproduced as below :-

"20(j) The revised pay scales shall become applicable to all employees with effect from 1st July, 2010. However, if an employee within three weeks from the date of publication of Government Notification under Section 12 of the Act enforcing these recommendations exercises his option for retaining his existing pay scale and "existing emoluments", he shall be entitled to retain his existing scale and such emoluments."

4. The above mentioned para 20(j) is integral part of Majithia Wage Board recommendations and has full force of law. Answering management has fully paid to applicant as per para 20(j). The applicant-workman had never raised any question nor made any complaint to the management or to the competent authority regarding the undertaking which he had given within specified time of three weeks. Now after lapse

of long time he is raising dispute of non-payment of wages as per Majithia Wage Board recommendations which is simply afterthought, illegal and baseless. No complaint can be entertained after passing almost eight years of lapse of prescribed period. On question of validity of 20(j), from 1955 to 2011 six Wage Boards were constituted i.e.

2nd May, 1956 - Dvetia Wage Board (notified on 1957) but Hon'ble Supreme Court has quashed the recommendations.

12th November, 1963 - Sindhiya Wage Board (notified on 27th November, 1967) but the same was quashed by the Hon'ble Supreme Court.

11th June, 1975 - Palekar Wage Board (notified on 26th November, 1980) but the same was implemented as per Clause 10 of the Wage Board.

17th July, 1985 - Bachawat Wage Board (notified on 31st August, 1989).

9th September, 1994 - Manishna Wage Board constituted on 5th December, 2000.

24th May, 2007 - Majithia Wage Board constituted on 24th May, 2007 (notified on 11.11.2011)

5. It is further stated that since year 1956 various wage Boards have been constituted from time to time and the option has been given to the employee to opt for the payment of existing pay scale and existing emoluments in all these aforesaid various wage Boards. When the Majithia Wage Board was finally notified on 11.11.2011, most of the employees opted to sign 20(j) as per their own accord and hence decided to exercise the option for retaining the existing pay scale and existing emoluments. The employees were informed about the option for 20(j) of the Majithia Wage Board recommendations for payment of existing pay scale and existing emoluments by affixing notice on the notice board of the company. The employees have themselves opted to sign 20(j) of the Majithia Wage Board recommendations on their own accord and free will. The allegations that the employees signed 20(j) under the coercion are totally false and baseless. The plea is beyond limitation. The plea of coercion is tenable as the same is foul of principles laid down under Order VI Rule 4 CPC. The validity of 20(j) of the Majithia Wage Board recommendations has not been challenged separately by any employee of any newspaper establishment even after 11.01.2014. The claim made in the instant claim statement by the claimant-workman is not maintainable under the provisions of the Section 17 of the Act as no amount is due and further the amount as claimed by the workman-claimant is based on non-existing right. The employer is paying the wages as per Section 20(j) of the Majithia Wage Board recommendations and no alleged amount of ₹ 46,63,747/- is due. The claimant-workman has already received his full wages as per para 20(j) of the notification dated 11.11.2011 and para 20(j) being part of the said notification has full force of law and cannot be ignored as provided in Majithia Wage Board recommendations. On this ground also nothing is due. Hence, claim statement is liable to be rejected on the ground that nothing is due of claimant-workman against the organisation.

6. Further in para wise reply, it is stated that the DB Corp. Ltd. is a group of business including digital media, MY FM, textile, power, property, print media, even management etc. Further, the DB Corp Ltd. is involving the business of marketing and publishing of newspaper in Chandigarh, and the printing press for publishing the newspaper is situated at Sirhind, Punjab. It is denied that the applicant-workman has always worked with honesty, sincerity, devotion and hard-work and diligence to the entire satisfaction of his superiors, sincerity and devotion while following the all the rules and guidelines. It is further denied that there has been never been any complaint against the applicant-workman. It is submitted that the applicant-workman was dismissed from his service due to his arrogant and non-devotion behaviour. The applicant-workman never requested the management for releasing the arrears of balance payments. The managements always honour the direction of the Hon'ble Apex Court. The applicant-workman has approached the management to submit

declaration under 20(j) in November 2011 thereafter the applicant-workman neither requested the management through personal visit nor through Form 'C' under Rule 36 of the Act 1955. Rest of the averments of claim statement are denied as wrong and prayer is made that the claim statement may be dismissed with exemplary costs, in the interest of justice.

7. The workman filed replication, wherein the contents of written statement except the admitted facts of the claim statement, are denied as wrong and the averments of the statement of claim are reiterated.

8. From the pleadings of the parties, following issues were framed vide order dated 03.07.2019:-

1. Whether the arrears of revision of pay to Shri Vijay Kumar Nayak were to be paid by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
2. Whether Shri Vijay Kumar Nayak does not fall under the definition of 'workman' as defined under Section 2(s) of the ID Act ? OPM
3. Whether the claim of Shri Vijay Kumar Nayak is bad on the ground of mis-joinder of necessary party ? OPM
4. Whether the claim of Shri Vijay Kumar Nayak is time barred ? OPM
5. Whether the claim of Shri Vijay Kumar Nayak is not maintainable under the provisions of Section 17 of the Working Journalists & Other Newspaper Employees (Condition of Services) and Miscellaneous Provisions Act, 1955 ? OPM
6. Relief.

9. In evidence, workman Vijay Kumar Nayak examined himself as AW1 and tendered his affidavit Exhibit 'AW1/A' along with documents Exhibit 'AW1' to Exhibit 'AW5'.

Exhibit 'AW1' is photocopy of identity card of Vijay Kumar bearing Employee Code No.12324.

Exhibit 'AW2' is copy of the pay slip for the month of May, 2018 issued by DB Corp. Ltd. to workman Vijay Kumar.

Exhibit 'AW3' (colly 7 pages) is copies of letters whereby annual increments / annual appraisal was granted to the workman Vijay Kumar.

Exhibit 'AW4' is copy of resignation tender by the workman Vijay Kumar through e-mail dated 09.05.2019.

Exhibit 'AW5' is copy of the details of calculation accompanied with calculation sheet of estimated gross salary as per Majithia Wage Board relating to workman Vijay Kumar.

10. The workman examined AW2 Dhruv Gupta - Chartered Accountant, who tendered his affidavit Exhibit 'AW2/A' along with documents Exhibit 'AW2/1' to Exhibit 'AW2/15'.

Exhibit 'AW2/1' is copy of the pay slip for the month of May, 2018 issued by DB Corp. Ltd. related to workman Vijay Kumar.

Exhibit 'AW2/2' is copy of the pay slip for the month of September, 2017 issued by DB Corp. Ltd. related to workman Vijay Kumar.

Exhibit 'AW2/3' is copy of revised compensation details effect from 01.04.2017 issued by DB Corp. Ltd. related to workman Vijay Kumar.

Exhibit 'AW2/4' is copy of revised compensation details effect from 01.04.29016 issued by DB Corp. Ltd. related to workman Vijay Kumar.

Exhibit 'AW2/5' is copy of revised CTC effect from 01.04.2019 issued by DB Corp. Ltd. related to workman Vijay Kumar.

Exhibit 'AW2/6' is copy of letter bearing No.Emp_id:12324 dated 29.07.2013 issued to workman Vijay Kumar whereby his CTC was revised from ₹ 1,09,944/- per annum to ₹ 1,17,144/- per annum w.e.f. 01.04.2013.

Exhibit 'AW2/7' is copy of letter bearing No.DB/CHRD/SO/12324 dated 22.04.2014 issued to workman Vijay Kumar whereby his annual cost to company was revised to ₹1,33,836/- per annum w.e.f. 01.04.2014.

Exhibit 'AW2/8' is copy of letter bearing No.DBCL/HR/12324-COD0344/2015 dated 29.07.2015 issued to workman Vijay Kumar whereby he was promoted as Compositor at S1 Grade and his annual cost to company was revised to ₹ 1,45,836/- per annum w.e.f. 01.04.2015.

Exhibit 'AW2/9' is copy of letter bearing No.DBCL/HR/12324/2016 dated 31.05.2016 issued to workman Vijay Kumar whereby his annual compensation was revised to ₹ 1,57,836/- per annum w.e.f. 01.04.2016.

Exhibit 'AW2/10' is copy of letter bearing No.DBCL/HR/12324/2017 dated 30.08.2017 issued to workman Vijay Kumar whereby his annual compensation was revised to ₹ 1,66,873/- per annum w.e.f. 01.04.2017.

Exhibit 'AW2/11' is copy of Employees' Provident Fund Organisation member passbook of Vijay Kumar Nayak for the period from April 2010 to March 2018.

Exhibit 'AW2/12' is copy of the details of calculation accompanied with calculation sheet of estimated gross salary as per Majithia Wage Board relating to workman Vijay Kumar.

Exhibit 'AW2/13' to Exhibit 'AW2/15' are copies of balance sheet of DB Corp. Ltd. for the period 2007-08, 2008-09 and 2009-10 respectively obtained from the website of the Ministry of Corporate Affairs, Govt. of India.

11. On 08.08.2022 workman closed his evidence.

12. On the other hand, management examined MW1 Avdhesh Gaur - Assistant Manager, HR Admin, O/o Dainik Bhaskar, Chandigarh, who tendered his affidavit Exhibit 'MW1/A' along with documents Exhibit 'M1' to Exhibit 'M3'.

Exhibit 'M1' is authority letter dated 27.02.2023 issued by DB Corp. Ltd. in favour of Avdhesh Gaur.

Exhibit 'M2' is copy of identity card of Avdhesh Gaur.

Exhibit 'M3' is copy of declaration form dated 15.11.2011.

13. On 12.12.2023 Learned Representative for management closed oral evidence. On 29.04.2024 Learned Representative for the management closed documentary evidence.

14. I have heard the arguments of Learned Representatives for the parties and perused the judicial file. My issue-wise findings are as below :-

Issues No. 1 & 2 :

15. Both these issues are taken up together being interconnected and in order to avoid repetition of discussion.

16. Onus to prove issue No.1 is on the workman and onus to prove issue No.2 is on the management.

17. In order to prove the entitlement of the workman to the arrears of pay on the basis of Majithia Wage Board recommendations notified on 11.11.2011 by the Government of India, workman Vijay Kumar examined himself as AW1 and vide his affidavit Exhibit 'AW1/A' deposed the averments of claim statement in toto, which are not reproduced here for the sake of brevity. Further in the affidavit Exhibit 'AW1/A' it is deposed that the workman had resigned from the job due to domestic reasons vide resignation sent through email dated 09.05.2019, which was duly accepted by the respondent by sending email dated 14.05.2019. AW1 supported his oral version with documents Exhibit 'AW1' to Exhibit 'AW5'.

18. In order to prove the calculation of the amount due from the management, the workman examined AW2 Dhruv Gupta - Chartered Accountant, who vide his affidavit Exhibit 'AW2/A' deposed that he is a Chartered Accountant by Profession and Partner of the DGR & Associates firm. DGR & Associates is a Firm of Chartered Accountants having its Office at 66, Venkateshwar Colony, New Sangarner Road, Sodala, Jaipur, Rajasthan - 302019. The claimant-workman Vijay Kumar had approached him and told him that the claimant-workman was working with DB Corp Ltd. and he wanted to claim the arrears due from the respondents as per the Majithia Wage Board Award. The claimant-workman asked him to prepare a report and a chart of arrears payable to him as per revised Scales of Wages recommended by the Majithia Wage Board and as per Notification dated 11.11.2011 issued by the Govt. of India. The claimant-workman supplied him his salary slips, appraisal letters, compensation details, EPF Passbook, copy of Govt. Notification dated 11/11/2011 and other details. He further deposed that he had carefully gone through the service conditions set out in the appointment order, promotion orders his total annual wages and monthly wages, pay slips and appraisal letters and other details provided to him by the claimant-workman and have also carefully gone through the Govt. Notification dated 11/11/2011 and the Recommendations of the Majithia Wage Board Award and after considering the above documents and provisions made in the Govt. of India Notification dated 11/11/2011, he have prepared his report and chart of calculations of Estimated Gross Salary/Wages Payable to the claimant-workman/employee along with interim relief as per the Majithia Wage Board. The calculations of Revised Scale of Wages have been made by him as per the directions and guidelines mentioned in Clause No. 3 to 22 of the Notification dated 11/11/2011. The respondent-management is running the Newspaper Establishments across the country under the name Dainik Bhaskar Corporation Ltd. i.e. DB Corp. Ltd.) and having its Registered Office at Plot No. 280, Savkhej, Gandhi Nagar Highway, Near YMCA Club, Ahmedabad, Gujarat-380051 and having its Newspaper Establishment Unit at Plot No. 11-12, Dakshin Marg Sector 25, Chandigarh-160036. The Newspaper Establishments are classified in Class I to VIII on the basis of their gross revenue and same are stated at Clause No. 6 in Section-II at Page No.13 of the Wage Board Recommendations of the Govt. Notification dated 11/11/2011. The balance sheets for the said period i.e. 2007-08, 2008-09 & 2009-10 as obtained from the website of the Ministry of Corporate Affairs, Govt. of India are annexed. He further deposed that the wages payable to the claimant-workman as per Revised Pay Scale from 11.11.2011 to 31.05.2018 comes ₹ 35,75,607/-. The claimant-workman has earned wages from 11.11.2011 to 31.05.2018 of ₹ 27,33,022/-. The arrears of wages (i.e. Difference excluding interest) to be received by the claimant-workman comes to ₹ 27,33,022/-. As per his knowledge the amount of arrears of ₹ 27,33,022/- has not been paid to the claimant-workman, hence he has made calculations of interest @ 18% per annum compounding quarterly from 11.11.2011 till 31.05.2018 which comes to ₹ 52,11,364/- including interim relief. In order to prove the basis of the calculation AW2 placed on record the documents Exhibit 'AW2/1' to Exhibit 'AW2/15'.

19. On the other hand, to controvert the evidence led by the workman, the management examined MW1 Avdresh Gaur - Assistant Manager (HR & Admin) of DB Corp. Ltd., who vide his affidavit Exhibit 'MW1/A' deposed that he is working as Assistant Manager (HR & Admin) with the respondents and has been authorised by the respondent to depose on its behalf in the above said case before this Court. He is well conversant with the facts of the present case. He further deposed that DB Corp. Ltd. is a group of business including textile, MY FM, Digital Media, Real estate, power, denim. As per Majithia Wage Board recommendation only the business of newspaper establishment i.e. circulation and advertisement of newspaper shall be counted and all the units have independent existence and the accounts of each unit are being prepared by that unit. He

further deposed that the claimant-workman does not fall under the definition of 'workman' as per Section 2(s) (ii to iv) of the ID Act. The claimant had also failed to claim himself as workman as per the provisions of the ID Act. As per nature as well as status of post, the claimant-workman does not fall within the definition of 'workman' as per Section 2 of the ID Act. He further deposed that it is a settled law that a civil suit does not lie after the expiry of 3 years of the cause of action and in the present case, the demand notice was received by the Assistant Labour Commissioner, Chandigarh, in February, 2018 for the benefit claimed by the claimant for the period 2011-18. The claimant-workman is not entitled for the benefit of the compliance of judgment passed by the Hon'ble Supreme Court of India as prior to passing of judgment by the Hon'ble Apex Court. The respondent-management has fully complied with the provision of Majithia Wage Board issued by the Central Government under notification dated 11.11/2011. The claimant-workman had already received the wages as per para 20(j) of the Majithia Wage Board recommendations. The claimant-workman has chosen / opted to retain his existing wages and existing emoluments as per para 29(j) of the Majithia Wage Board at his own voluntarily by signing a declaration dated 15.11.2011 and after signing the declaration, now nothing is payable to the applicant as he has already received wages according to option opted by him of para 20(j) and opted to retain his current salary and emoluments at that time. All the employees working have given their signatures on option letter as per their will and submitted it to the management. MW1 supported his oral version with documents Exhibit 'M1' to Exhibit 'M3'.

20. It is undeniable fact of parties that the services of the workman were governed under the Working Journalists & Other Newspaper Employees (Condition of Service) and Miscellaneous Provisions Act, 1955. From the oral as well documentary evidence led by the parties and from the pleadings, it emerges that admittedly the workman joined the management on 09.01.2006 as Compositor (Editorial). Learned Representative for the workman argued that though the workman was working as Compositor and was not having any supervisory or managerial powers. On the other hand, Learned Representative for the management argued that the claimant-workman was responsible to manage the team assigned. Since, the claimant-workman was performing the duties under the supervisory capacity as such the workman ceased to be a 'workman' as per the definition under Section 2(s) of the ID Act. To my opinion, the argument advanced by Learned Representative for the management that claimant-workman does not fall within the definition of 'workman' as defined in Section 2(s) of the ID Act is devoid of merit because as per the judgment of Hon'ble Apex Court titled as *Anand Regional Coop. Oil Seedsgrowers' Union Limited Versus Shaileshkumar Harshadbhai Shah, reported in 2006 SCC (L&S) 1486*, referred by Learned Representative for the workman, which is applicable to the facts of the present case to an extent, mere designation of the post held by an employee is not the only determining factor as to whether he is a 'workman' as defined under Section 2(s) of the ID Act or not. Main and dominant nature of duties performed by the employee would be the determining factor. What are the prime duties he performs is to be seen. As already discussed above, the workman has alleged that he was not having any supervisory or managerial powers. On the other hand, the management did not elaborate as to what kind of administrative, managerial or supervisory duties were performed by the workman. It is neither pleaded nor proved into evidence that the claimant-workman had the power to make temporary appointments, grant leave and initiate disciplinary proceedings etc. Further, MW1 during his cross-examination stated that he cannot tell the name of the members of the team, who were working under Vijay Kumar Nayak. The workman Vijay Kumar Nayak was not competent to issue any appointment letter, termination letter to any of the employees of the management and was not competent to take disciplinary action against any employee of the management. Thus, it is proved on that the workman was not performing any administrative, managerial or supervisory duties and falls within the definition of 'workman' as defined under Section 2(s) of the ID Act.

21. Learned Representative for the workman argued that in view of the Majithia Wage Board recommendations notified on 11.11.2011 claimant-workman is entitled to arrears of pay for the period 11.11.2011 to 09.05.2019 as detailed in the calculation sheet Exhibit 'AW5' / Exhibit 'AW2/12' prepared by Chartered Account Dhruv Gupta examined as AW2. On the other hand, Learned Representative for the management argued that the workman has voluntarily exercised option to retain his existing pay scale and existing emoluments under para 20(j) of Majithia Wage Board recommendations by signing a declaration dated 15.11.2011 / Exhibit 'M3'. The management has fully paid wages to the claimant-workman as para 20(j) of Majithia Wage Board

recommendations. Moreover, the claimant-workman had never raised any question nor made any complaint to the management or to any competent authority regarding the undertaking given by him in the form of declaration Exhibit 'M3'. To my opinion, declaration dated 15.11.2011 is not put to the claimant-workman / AW1 in his cross-examination which deprived the opportunity to the claimant-workman to admit or deny the same. It is not proved by the management that before obtaining options under para 20(j) of Majithia Wage Board recommendations from its employees, any public notice was affixed on the notice board to inform or appraise the employees to submit a declaration. Moreover, in para 8 of replication, in reply to preliminary objections the claimant-workman has pleaded that he never chose / opted to retain his existing wages and existing emoluments as per para 20(j). The claimant-workman further pleaded that the alleged undertaking was got signed by the management under pressure and without disclosing the contents of the same to the claimant. The said undertaking is totally involuntarily and in any case the wages fixed by the wage board will prevail over any such undertaking. Learned Representative for the workman referred the unreported **judgment dated 22.04.2024 passed by the Hon'ble High Court of Madhya Pradesh at Jabalpur in Misc. Petition No.5093 of 2022 between Dainik Bhaskar and the State of Madhya Pradesh & Others.** In the said judgment the claimant-workman is impleaded as respondent and Dainik Bhaskar through its authorised Representative is petitioner. In para 15, 16 and 26 of the judgment (supra) it has been held as below :-

- "15. Thus, the burden that the declaration was given voluntarily by the respondent is upon the petitioner. Although it is the stand of the Petitioner that a public notice was affixed on the notice board that the employees has to submit a declaration in the light of clause 20(j) of Majithia Wage Board, but the Petitioner has miserably failed to prove that the employees were informed about the recommendations of the Majithia Wage Board and only after understanding the same, the respondent had voluntarily signed the declaration form. There is nothing on record that even the recommendations of the Majithia Wage Board were also affixed on the notice board, so that the respondents and others can go through the same. The petitioner being the employer was undoubtedly in a dominating position as it has every power to terminate the service or regulate the service conditions of the respondent.
16. Under these circumstances, this Court is of the considered opinion, that the Petitioner has miserably failed to discharge its burden to prove that the respondent had voluntarily executed the declaration under clause 20(j) of the Majithia Wage Board.
-
26. Similarly, if an employer pays less than the Minimum Wages, then such an act of the employer would be punishable under Section 22 of the Minimum Wages Act. Thus, if the contention of the Petitioner, that if a declaration has been made by an employee under Clause 20(j) of Recommendations of Majithia Wage Board and agrees to work on a lesser pay than what was recommended by the Majithia Wage Board is accepted, then it would amount to permitting the employer to pay lesser wages than the Minimum Wages. Therefore, what is otherwise an offence and violative of Art. 23 of the Constitution of India, cannot be legalize under Clause 20(j) of recommendations Majithia Wage Board. Further any interpretation which leads to legalize an act which otherwise is an offence should always be avoided. Thus, only that declaration can be said to be a valid declaration under Clause 20(j) of recommendations of Majithia Wage Board if it is in favour of the employee and not detrimental to his interest. Therefore, the contention of the petitioner that the respondent had given a declaration thereby expressing his

satisfaction over the pay scale which was given to him cannot be accepted, and it cannot be held that the respondent was estopped from claiming higher pay scale as recommended by Majithia Wage Board."

22. Learned Representative for the workman referred another unreported ***judgment dated 27.04.2023 of Hon'ble High Court of Uttar Pradesh at Lucknow passed in Writ-C No.10419 of 2023 titled as M/s Jagran Prakashan Limited Versus Sh. Amar Kumar Singh & 3 Others and Writ-C No.23212 of 2021 titled as M/s Jagran Prakashan Limited Versus Krishan Lal & 4 Others***, wherein in para 31, 33 and 35, it has been held as below :-

"31. It is well settled that the Act, a piece of socio beneficial legislation enacted with a view to give reasonable working conditions to the employees of the newspaper establishment, needs to be interpreted in a manner, which leads to achieve the purpose for which the Act was enacted. The provisions of Clause 20(J) read with Section 13 and 16 have to be interpreted harmoniously to ensure that none of the provisions are rendered otiose.

.....

33. The argument of the counsel for the petitioner in the light of the provisions of Clause 20(J), if accepted, would render the entire Act inapplicable and if the said argument is accepted, the same would be in clear violation of the mandate of Section 12, 13, 13-C, 13-D and Section 16 of the Act.

.....

35. It is further inconceivable as to why the employee would agitate for the wages and emoluments by instituting proceedings under Section 17 if he was getting more amounts than what was prescribed by the wage board, it is equally inconceivable as to why any newspaper establishment would contest such proceedings if they felt that the wages and emoluments paid to an employee under an agreement are more than the recommendations of the board."

23. The above referred judgments are applicable to the facts of the present case to an extent and accordingly the declaration under Clause 20(j) of Majithia Wage Board recommendations / Exhibit 'M3' cannot be said to be a valid declaration and it does not operate as a bar to the claimant-workman to claim higher pay scale as recommended by Majithia Wage Board.

24. Learned Representative for the management argued that the claimant-workman has failed to prove into evidence the income of the DB Corp. Limited from the circulation and advertisement of the newspaper. The gross income of DB Corp. Limited from its other business of textile, My FM, digital media, real estate, power, event management and denim etc. cannot be taken into consideration. In the absence of independent income of the management from circulation and advertisement of the newspaper, the calculation sheet based upon gross revenue of DB Corp. i.e. balance sheet Exhibit 'AW2/13' to Exhibit 'AW2/15' cannot be considered. To my opinion, Dainik Bhaskar is responsible to maintain the record of income from circulation and advertisement of newspaper. The claimant-workman is not supposed to be in possession of any record of income and expenditure or balance sheet of the income of Dainik Bhaskar from circulation and advertisement of newspaper. MW1 when put to cross-examination stated that he cannot tell in how many cities DB is being published. He cannot tell the gross revenue of DB Corp. from advertisement, circulation, MyFM, real estate, power and denim.

25. The workman has alleged that the management falls under Class I of the Newspaper establishment as its annual turn over is ₹ 1,000/- crore and above. On the other hand, management has denied the fact that the management falls under category of Class - I of the newspaper and took the plea that the management

newspaper falls under the category of Class - V as per the recommendations of Majithia Wage Board. To my opinion, the best documents to determine the annual turn-over of the newspaper establishment is the balance sheet. The balance sheet is supposed to be in possession of the newspaper establishment. In the present case, the management has withheld the best evidence by non-production of the balance sheet of the newspaper establishment-management, which raises strong presumption against the management and there is no reason to disbelieve the plea of the workman that the management newspaper falls under Group - I newspaper establishment having gross annual turn over of ₹ 1,000/- crore and above.

26. In view of the discussed madeabove, the claimant-workman falls within the definition of 'workman' as defined under Section 2(s) of the IDAct and is entitled to recover arrears of difference of pay for the period from 11.11.2011 to 09.05.2019.

27. Accordingly, issue No.1 is decided in favour of the claimant-workman and against the management. Issue No.2 is decided against the management and in favour of the claimant-workman.

Issue No. 3 :

28. Onus to prove this issue is on management. During course of arguments this issue is not pressed by management.

29. Accordingly, this issue is decided against management and in favour of the claimant-workman.

Issue No. 4 :

30. Onus to prove this issue is on the management.

31. Learned Representative for management contended that the claim statement is time barred. A Civil Suit does not lie after the expiry of three years of the cause of action. In the present case, the demand notice / claim application filed by the workman before the Assistant Labour Commissioner, Chandigarh in June, 2018 for the benefit claimed by the claimant-workman for the year 2011 to 2019. On the other hand, Learned Representative for the workman argued that the workman is seeking his revised pay w.e.f. 01.11.2011, amount of interim relief and arrears of pay with interest @ 18% per annum as per the award given on the recommendations of Majithia Wage Board. On every passing month, the claimant was getting less salary than his due entitlement and on every month a fresh cause of action had arisen in favour of the workman. Whereas the reference to this Tribunal was made by the Secretary Labour, Chandigarh Administration on 03.08.2018. Thus, the claim of the workman is well within time in as much as the cause of action in the present case is reoccurring in nature.

32. As proved from the documents on judicial file, the workman raised the application demanding wages as per the Majithia Wage Board Award before the Labour Commissioner, U.T. Chandigarh on 25.06.2018 and the Worthy Secretary Labour, Chandigarh Administration under Section 17(2) of the Act 1955 referred to present dispute for adjudication to this Tribunal / Court vide reference dated 03.08.2018 bearing endorsement dated 06.08.2018. Moreover, the contention raised by Learned Representative for the workman carries force as denial of revision of pay and benefits of arrears of pay is a continuing cause giving rise to a recurring cause of action. Therefore, the bar of limitation does not apply.

33. Accordingly, this issue is decided against management and in favour of the workman.

Issue No. 5 :

34. Onus to prove this issue is on the management.

35. Learned Representative for the management argued that the present claim statement is not maintainable under Section 17 of the Act as no amount is due and the amount claimed is based on non-existing

right. To my opinion, the argument advanced by Learned Representative for the management is devoid of merits in view of Section 8 of the Act, which reads as below :-

"8. Fixation or revision of rates of wages.-{1} *The Central Government may, in the matter hereinafter provided.-*

- (a) *fix rates of wages in respect of working journalists;*
- (b) *revise, from time to time, at such intervals as it may think fit, the rates of wages fixed under this section or specified in the order made under section 6 of the Working Journalists (Fixation of Rates of Wages) Act, 1958 (29 of 1958).*
- (2) *The rates of wages may be fixed or revised by the Central Government in respect of working journalists for time work and for piece work."*

36. In view of the aforesaid provision of the Act, the claimant-workman is entitled to the wages fixed under Majithia Wage Board recommendations. As far as the relief claimed under Section 17 of the Act is concerned, in the **judgment dated 27.03.2023 of Hon'ble High Court of Uttra Pradesh at Lucknow passed in Writ-C No.10419 of 2023 and Writ-C No.23212 of 2021(supra)**, which is applicable to the facts of the present case to an extent, it has been held in para 30as below :-

"30. The argument of the counsel for the petitioner is that once the respondents have accepted the wages, emoluments and benefits as were existing by giving an undertaking, they are precluded from raising a claim under Section 17 of the Act, merits rejection for the sole reason that the Clause 20(j) of the Wage Board has to be read in context with the explanation under Clause 20(j) read with Section 13 and 16 of the Act."

37. Accordingly, this issue is decided against the management and in favour of the claimant-workman.

Relief :

38. In the view of foregoing finding on the issues above, this reference is allowed and answered in favour of the workman to the effect that the workman is held entitled to the wages for the period from 11.11.2011 to 09.05.2019 as per the Majithia Wage Board recommendations after deduction of wages drawn by him during the said period. The management is directed to comply with the award within three months from the date of publication of the same in Government Gazette failing which the management is liable to pay interest at the rate 8% per annum on the amount of consequential benefits from the date of this award till its actual realisation. Appropriate Government be informed. Copy of this award be also sent to Learned District Judge, Chandigarh in view of Sub-section 10 of Section 11 of the Industrial Disputes (Amendment) Act, 2010 for onward transmission of the same to concerned Civil Court. File be consigned to the record room.

(Sd.) . . . ,

(JAGDEEP KAUR VIRK)

PRESIDING OFFICER,

Industrial Tribunal & Labour Court,

Union Territory, Chandigarh.

UID No. PB0152.

Dated : 30.04.2024.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT**Notification**

The 31st July 2024

No. 13/2/137-HII(2)-2024/12043.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. **81/2021** dated **01.05.2024** delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

BHAG SINGH S/O SH. SARDARA SINGH, VILLAGE NABHA, DISTRICT MOHALI. (Workman)

AND

M/S ASHISH INDUSTRIES, PLOT NO.597, INDUSTRIAL AREA, PHASE - II, CHANDIGARH
THROUGH ITS PROPRIETOR. (Management)**AWARD**

1. Bhag Singh, workman has presented industrial dispute under Section 2A(2) of the Industrial Disputes Act, 1947 (*here-in-after in short called 'ID Act'*).

2. Briefly stated the averments of claim statement are that workman was appointed by the management as Machine Operator on 18.11.1999. The workman remained in uninterrupted employment up to 10.05.2020 when his services were illegally and wrongfully terminated by refusing of work. The workman was drawing ₹ 12,700/- per month as wages at the time of termination. Initially the factory was running at plot No.181/16 and workman was appointed there. Later on the factory was shifted to Plot No.111, Phase VII, Mohali and from the last about 5 years the factory is running from Plot No.597, Industrial Area, Phase - II, Chandigarh. The workman remained in continuous employment from the date of appointment i.e. 18.11.1999 till the date of termination. On 10.05.2020 the workman went to attend his normal duty but he was refused work by the management without assigning any reason and notice. Refusal of work, which amounts to termination, is retrenchment under Section 2(oo) of the ID Act. The management has also violated Section 25F of the ID Act. No charge sheet was issued, no inquiry was held and the workman was not paid retrenchment compensation at the time of termination. The workman lodged a complaint dated 27.07.2020 with the Labour Inspector, U.T. Chandigarh for his reinstatement. The management refused to take the workman back on duty before the Labour Inspector, U.T. Chandigarh. For his reinstatement the workman served upon the management a demand notice dated 09.02.2021. The management neither denied the contents of the demand notice nor took the workman back on duty. The Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh was requested for his intervention. The Conciliation Officer intervened but the dispute could not be settled within the stipulated period. The management did not appear before the Conciliation Officer on the last date for settlement. The action of the management is illegal, wrongful, motivated, against the principle of natural justice and unfair labour practice. The workman remained un-employed during the period i.e. from the date of termination to till date. Prayer is made that the workman may be reinstated with full back wages along with continuity of service and full attendant benefits without any change in his service condition.

3. On notice, management contested the claim statement by filing written statement dated 08.09.2022, wherein preliminary objections are taken on the ground that the claim statement is not maintainable. The claimant (here-in-after workman) has not stated under which Section and under which Act the alleged statement

of claim is filed. The workman has no locus standi and cause of action. The claim statement is barred by own act & conduct of the workman. The claim statement is an abuse of the process of law. The claim statement is misleading and misconceived. The claim statement is false, frivolous, vexatious and ulterior motivated, filed with malafide intention to extort money from the management. The workman has suppressed the true and material facts of abstaining from his duties in an un-authorised manner. The management has never terminated the services of the workman as alleged or by issuing any letter of termination. The management has advised the workman through its various communications to report for his duties and not to indulge in unfair labour practice. The management reserves its right to take appropriate disciplinary action for abstaining from his duties and for filing false, fabricated and vexatious claim. The services of the workman have never been terminated by the management. Therefore, the present claim statement does not constitute an industrial dispute under the ID Act. The workman may be put to strict proof of having terminated his services by the management.

4. Further in para-wise reply, it is stated that since there is no retrenchment, therefore, the so called Section does not apply to the management. Moreover, the workman has admitted that it is retrenchment and therefore, the appropriate authority is the Labour Commissioner (Central) for deciding the matter of retrenchment i.e. whether it is legal or illegal. There is no termination of the workman so the question of charge sheet and inquiry does not arise. The answering management did not violate any provision of Section 25F of the ID Act. The workman has left the services of his own accord as such, no direction is required to be issued by this Tribunal. Further similar stand is taken as taken in the preliminary objections. Rest of the contents of the claim statement are denied as wrong and prayer is made that claim statement may be dismissed.

5. The workman filed rejoinder wherein the contents of the written statement, except admitted facts, are denied as wrong and averments of claim statement are reiterated.

6. From the pleadings of the parties, following issues were framed vide order dated 06.01.2023 :-

1. Whether the termination of the workman is illegal ? OPW
2. If issue No.1 is proved in affirmative, whether the workman is entitled to reinstatement with continuity of service, full back wages and all other consequential benefits, as prayed for ? OPW
3. Whether the claimant / workman has no cause of action and locus standi ? OPM
4. Whether the statement of claim is false, frivolous and vexatious to the knowledge of the workman ? OPM
5. Whether the statement of claim is not maintainable ? OPM
6. Relief.

7. In evidence workman Bhag Singh examined himself as AW1 and tendered his affidavit Exhibit 'AW1/A'. On 19.02.2024 Learned Representative for the workman closed evidence in affirmative.

8. On the other hand, management examined MW1 Ashish - Proprietor of Ashish Industries, Plot No.597, Industrial Area, Phase - II, Chandigarh, who tendered his affidavit Exhibit 'MW1/A'. Learned Representative for the management closed oral evidence on 08.04.2024 and closed the documentary evidence on 30.04.2024.

9. I have heard the arguments of Learned Representatives for the parties and perused the judicial file. My issue-wise findings are as below :-

Issue No. 1 & 2 :

10. Both these issues are taken up together being interconnected and in order to avoid repetition of discussion.

11. Onus to prove both these issues is on the workman.

12. Under these issues workman examined himself as AW1 and vide his affidavit Exhibit 'AW1/A' deposed the averments of claim statement in toto, which are not reproduced here for the sake of brevity.

13. On the other hand, management examined MW1 Ashish - Proprietor of Ashish Industries, who vide his affidavit Exhibit 'MW1/A' deposed the entire contents of the written statement which are not produced here to avoid repetition.

14. From the oral as well as documentary evidence led by the parties and pleadings, it emerges that M/s Ashish Industries is at present situated and running from plot No.597, Industrial Area, Phase - II, Chandigarh as the same address of the management industry is mentioned by MW1 when he examined himself in the witness box being Proprietor of M/s Ashish Industries. At the time of examining himself MW1 Ashish mentioned that he is aged about 37 years S/o Dev Raj Bansal, Proprietor of Ashish Industries, Plot No.597, Industrial Area, Phase - II, Chandigarh. From this the denial of suggestion by MW1 that management factory was shifted to plot No.597, Industrial Area, Phase - II, Chandigarh stands falsified. Learned Representative for the workman contended that initially the factory was running at plot No.181/16 and the workman was appointed there and later on the said factory was shifted to Mohali and from last about five years the factory is running from Plot No.597, Industrial Area, Phase - II, Chandigarh. MW1 in his cross-examination admitted as correct that the management was previously functioning at plot No.244, Phase - I, Chandigarh. MW1 volunteer stated that factory at plot No.244 was owned by someone else. From the aforesaid version of MW1, it is established that the factory allegedly running from plot No.244, Phase - I, Chandigarh has no concern with M/s Ashish Industries (here-in management). MW1 admitted as correct that the factory was shifted to Plot No.181/16, Chandigarh. MW1 further stated that the factory was shifted to Plot No.111, Phase VII, Mohali, which was named Ashish Industries. MW1 admitted as correct that the management Ashish Industries is functioning at Phase - VII, Mohali for the last 6-7 years. MW1 volunteer stated that factory at Phase - VII was different. The plea of MW1 that new factory under the name of Ashish Industries was started at Mohali does not stand prove as MW1 did not place on record any document of registration of new factory. There is no reason to believe that factory running at Mohali with the identical name M/s Ashish Industries was different from the management factory. Moreover, two separate factories cannot run or operate with the identical name & style.

15. Learned Representative for the workman argued that the workman was appointed as Machine Operator on 18.11.1999 by the management factory and workman remained in continuous employment of the management up to 10.05.2020 when his services were terminated by the management by refusing work. On the other hand, Learned Representative for the management argued that in the written statement and evidence of MW1, the management has specifically denied the date, month and year of appointment as alleged by the workman. Learned Representative for the management further argued that the workman has not proved into evidence the appointment letter. To support his arguments Learned Representative for the management referred cross-examination of AW1 wherein he has stated that no appointment letter was issued to him by the management. Learned Representative for the management referred cross-examination of AW1 wherein he has further stated that he did not place on record any document showing his service with the management. To my opinion, the plea taken by the management in the written statement that workman with his own free will left the services of his own accord would pre-suppose that the workman was in the employment of management industry. It is the management- employer, who is legally bound to maintain the service record of its employees. MW1 in his cross-examination stated that the management has never issued appointment letter to any of his workers and also never issued wage slips to any of its worker. MW1 further stated that the management has not maintained any register of bonus under the Payment of Bonus Act. In the present case, the management did not produce into evidence the service record or appointment letter of the workman to contradict the workman's plea that he joined service as Machine Operator with the management on 18.11.1999 and remained in its continuous employment up to 10.05.2020.

16. Learned Representative for the management contended that the workman has not placed on record the termination letter because in fact the services of the workman were never terminated and workman himself left the job. To support his contention Learned Representative for the management referred cross-examination of AW1 wherein he has stated that no letter of termination was issued to him. To my opinion, the aforesaid contention raised by Learned Representative for the management is devoid of merits because the workman has specifically alleged that he was refused work by the management without assigning any reason or notice. Thus, the workman's plea is that his services were terminated by verbal order and not by issuing any letter of termination in writing. So far as the plea taken by the management that the workman left the services of his own accord is concerned, in that situation the management was legally bound to issue written notice to the workman requiring him to join back duty and in case the workman despite receipt of such notice failed to re-join his service, then management must take disciplinary action against the workman. In the present case, MW1 when put to cross-examination stated that workman was doing the job of Machine Operator with the management. MW1 further stated that he does not remember if workman was ever communicated through any mode to re-join duty. From the aforesaid version of MW1 it is sufficiently proved on record that the management did not issue any letter or never communicated to the workman requiring him to rejoin duty.

17. The workman has alleged that he was drawing ₹ 12,700/- as wages per month. In the written statement and affidavit Exhibit 'MW1/A' the management has denied the said fact. The management in cross-examination of AW1 had put suggestion that the workman was getting monthly wages of ₹ 12,700/-. In this regard, AW1 when put to cross-examination admitted as correct that he was getting monthly wages of ₹ 12,700/-. The aforesaid suggestion put by the management would support the workman's plea that his monthly wages were ₹ 12,700/- per month.

18. The workman has specifically pleaded that he was appointed by the management as Machine Operator on 18.11.1999 and remained in un-interrupted employment up to 10.05.2020 and further alleged that he was refused work by the management on 10.05.2020 when he went to attend his normal duties. On the other hand, the management in the written statement simply denied as wrong that the workman was appointed on the date, month and year as alleged. The management did not mention any specific date, month and year to counter the specific plea of the workman. Besides, the management did not specifically deny that the workman remained in un-interrupted employment up to 10.05.2020 but has only taken the counter plea that workman has left the services of his own accord. It is settled law that fact which is not specifically denied is deemed to be admitted. Moreover, MW1 in his cross-examination stated that in the proceedings before the Conciliation Officer, written statement and his affidavit Exhibit 'MW1/A' he did not deny the fact that the workman was appointed as Machine Operator on 18.11.1999. MW1 further stated that he has not maintained any wage register and attendance register of the workman and he does not know how he has calculated that the workman has not completed 240 days of continuous service proceedings termination. The version of MW1 referred above would support the plea of the workman that he remained in continuous and uninterrupted service of the management from 18.11.1999 up to 10.05.2020. Thus, workman is proved to have completed continuous service of 240 days with the management in 12 calendar months preceding termination.

19. The plea of the workman that his services were terminated by refusal of work w.e.f. 10.05.2020 stands proved from cross-examination of MW1 wherein he has stated that he has seen his affidavit Exhibit 'MW1/A' which bears his signatures at point 'A' & point 'B'. He has not read the contents of affidavit Exhibit 'MW1/A' before putting his signatures on it. MW1 stated that he does not know on what basis he has written in his affidavit that claimant/workman left the services with his own will. MW1 further stated that he does not know if last drawn wages of the workman were ₹12,700/- per month. From the aforesaid version of MW1 it is made out that MW1, who himself is Proprietor of management industry does not know on what basis he alleged that the workman left the service of his own. Under the circumstances, it cannot be disbelieved that the workman was verbally refused work w.e.f. 10.05.2020 by the management industry. Furthermore in cross-examination MW1 has introduced a new story by alleging that the workman was employee of the contractor

and the contractor never informed the management about the working days of the workman. The contractor remained with the management for two years and perhaps the contract started in the year 2018. MW1 admitted as correct that he has not mentioned any of the facts deposed today in his cross-examination, in the written statement and his affidavit Exhibit 'MW1/A'. From the aforesaid version of MW1 it is made out that the new story of employment of workman through contractor, set-up in his cross-examination is beyond pleadings and thus not admissible. In cross-examination MW1 stated that he does not if the workman had worked with the management up to 10.05.2020. The fact that workman had worked with the management up to 10.05.2020 being not specifically denied is deemed to be admitted under the law. The management's plea that workman left the job of his own accord does not stand proved in view of the contradictory pleas taken by the management. On the one hand, management has pleaded that the workman left the service of his own accord. On the other hand, Proprietor of the management / MW1 in his cross-examination taken the stand that workman used to visit the management's company along with co-worker and the workman was paid wages through the contractor. MW1 further stated that he does not know the complete name and address of the contractor and voluntarily stated that Kalsi resident of Ramdarbar was the contractor. MW1 further stated that no writing of any kind of contract or agreement was made by the management with the alleged contractor Kalsi for deployment of outsource employee. From the facts & circumstances mentioned above, it is duly proved the workman remained in continuous employment of the management from 18.11.1999 to 10.05.2020. Consequently, the workman is proved to have completed continuous service of 240 days in 12 calendar months preceding the date of termination (services terminated with verbal order on 10.05.2020). Thus, the workman fulfils the requirement of Section 25B of the ID Act. Once the requirement of Section 25B is fulfilled then the provisions of Section 25F is attracted. Section 25F of the ID Act is extracted herein below :-

"25F. Conditions precedent to retrenchment of workmen. - No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;*
- (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay [for every completed year of continuous service] or any part thereof in excess of six months; and*
- (c) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette]."*

20. In the present case, the management has failed to prove the compliance of conditions laid down under Section 25F of the ID Act, before terminating the services of the workman with the verbal order on 10.05.2020. In this regard, workman has taken specific plea in the claim statement as well as in his affidavit Exhibit 'AW1/A' that no charge sheet was issued, no retrenchment compensation was paid to the workman. On the other hand, it is neither pleaded nor proved by the management that before terminating the services of the workman, the management has complied with the provisions of Section 25F of the ID Act.

21. In view of the discussion made above, the verbal order of termination of services w.e.f. 10.05.2020 being in violation to Section 25F of the ID Act is illegal and hereby set aside. The management has failed to controvert the plea of the workman that from the date of termination till date he remained un-employed. Therefore, the workman is held entitled to reinstatement with continuity of service along with 75% back wages and all consequential benefits.

22. Accordingly, both these issues are proved in favour of the workman and against the management.

Issues No. 3 to 5 :

23. All these issues are taken up together being interconnected and in order to avoid repetition of discussion.

24. Onus to prove all these issues is on the management.

25. The workman on being aggrieved from the management's act of illegal termination of his services, was left with no other option than to raise an industrial dispute and to present industrial dispute reference. Thus, the workman has a valid cause of action and locus standi. Learned Representative for the management has failed to prove the concealment of any material fact by the workman. The present claim statement is being filed with a valid cause of action and locus standi well within the territorial jurisdiction of the present Tribunal / Court after raising the demand notice and on failure of the conciliation proceedings before the Assistant Labour Commissioner-cum-Conciliation Officer U.T. Chandigarh, who vide failure report bearing Memo No.1356 dated 05.07.2021 advised the workman to approach the appropriate forum for the adjudication of his dispute. Thus, I do not find any defect so far maintainability of the present industrial dispute reference / claim statement is concerned.

26. Accordingly, all these issues are decided against the management and in favour of the workman.

Relief :

27. In the view of foregoing finding on the issues above, this industrial dispute is allowed. The workman is held entitled to reinstatement with continuity of service along with 75% back wages and all consequential benefits. The management is directed to comply with the award within three months from the date of publication of the same in Government Gazette failing which the management is liable to pay interest at the rate 8% per annum on the amount of consequential benefits from the date of this award till its realisation. Appropriate Government be informed. Copy of this award be also sent to Learned District Judge, Chandigarh in view of Sub-section 10 of Section 11 of the Industrial Disputes (Amendment) Act, 2010 for onward transmission of the same to concerned Civil Court. File be consigned to the record room.

(Sd.) . . . ,

(JAGDEEP KAUR VIRK)

PRESIDING OFFICER,

Industrial Tribunal & Labour Court,

Union Territory, Chandigarh.

UID No. PB0152.

Dated : 01.05.2024.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 31st July, 2024

No. 13/1/9518-HII(2)-2024/12045.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. **73/2018** dated **30.04.2024** delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

RACHNA SHARMA W/O SH. ARUN SHARMA, R/O HOUSE NO. 2545, SECTOR 22/C, CHANDIGARH. (Workman)

AND

1. THE DINIK BHASKAR CORPORATION LIMITED, 280, BHASKAR HOUSE, NEAR YMCA CLUB, MAKARBA, SARKHEJ-GANDHI NAGAR ROAD, AHMEDABAD 380051 (REGISTERED OFFICE).
2. HE DAINIK BHASKAR CORPORATION LIMITED, DAINIK BHASKAR, HEAD OFFICE, 6, PRESS COMPLEX, RAM GOPAL MAHESHWARI MARG, ZONE_I, MAHARANA PARTAP NAGAR, BHOPAL, M.P (HEAD OFFICE) THROUGH IT'S
 - A) RAMESH CHANDER AGGARWAL, CHAIRMAN,
 - B) SUDHIR AGGARWAL, MANAGING DIRECTOR,
 - C) GARISH AGGARWAL, MANAGING DIRECTOR,
 - D) PAWAN AGGARWAL, MANAGING DIRECTOR.
3. THE DAINIK BHASKAR CORPORATION LIMITED, PLOT NO. 11-12, SECTOR 25, CHANDIGARH THROUGH ITS ASSISTANT GENERAL MANGER HR CPH2.
4. THE DAINIK BHASKAR CORPORATION LIMITED, DAINIK BHASKAR, PLOT NO. 11-12, SECTOR 25, CHANDIGARH THROUGH ITS AND PUBLISHER.
5. THE DAINIK BHASKAR CORPORATIO LIMITED PLOT NO. 11-12, SECTOR 25, CHANDIGARH THROUGH ITS FINANCE HEAD, REPORTING AUTHORITY OF THE CLAIMANT. (Managements)

AWARD

1. Vide Endorsement No.13/1/9518-HII(2)-2018/11487 Dated 27.07.2018 the Secretary Labour, Chandigarh Administration has referred the dispute to this Court / Tribunal on the claim application filed by Rachna Sharma (*here-in-after referred "workman"*) to The Dainik Bhaskar Corporation Limited & Others (*here-in-after referred "management"*) under Section 17(1) of the Working Journalists & Other Newspaper Employees (Condition of Service) and Miscellaneous Provisions Act, 1955 (*here-in-after in short referred "Act 1955"*) in following words :-

"Whether the arrears of revision of pay to Smt. Rachna Sharma, W/o Sh. Arun Sharma, R/o House No.2545, Sector 22/C, Chandigarh (Applicant/Claimant) were to be paid by 1. The Dainik Bhaskar Corporation Limited, 280, Bhaskar House, near YMCA Club, Makarba, Sarkhej-Gandhi Nagar Road, Ahmedabad 380051 (Registered Office).

2. *The Dainik Bhaskar Corporation Limited, Dainik Bhaskar, Head Office, 6, Press Complex, Ram Gopal Maheshwari Marg, Zone-1, Maharana partap Nagar, Bhopal, M.P (Head Office) through its a) Ramesh Chander Aggarwal, Chairman, b) Sudhir Aggarwal, managing Director, c) Garish Aggarwal, Managing Director, d) Pawan Aggarwal, Managing Director.*

3. *The Dainik Bhaskar Corporation Limited, Plot No. 11-12, Sector 25, Chandigarh through its Assistant General Manager HR CPH2.*

4. *The Dainik Bhaskar Corporation Limited, Dainik Bhaskar, Plot No. 11-12, Sector 25, Chandigarh through its and Publisher.*

5. *The Dainik Bhaskar Corporation Limited, Plot No. 11-12, Sector 25, Chandigarh through its Finance Head, Reporting authority of the claimant (Respondents) according to the recommendations of the Majithia Wage Board and also as per the direction of the Hon'ble Supreme Court of India under The Working Journalists And Other Newspaper Employees (Conditions of Service) And Miscellaneous Provision Act, 1955 and in compliance of the orders dated 28.04.2015, 12.01.2016, 14.03.2016, 23.08.2016 passed by the Hon'ble Supreme Court of India in CCP No.128/2015 and 129/2015 AND WP (Civil) 246/2011 dated 07.02.2014; if so, to what effect and to what relief he is entitled to, if any ?"*

2. Upon notice, the workman appeared through her Representative Shri Gaurav Tangri. Briefly stated the averments of claim statement are that the respondent No. 1 - DB Corp Ltd. (*here-in-after 'management No.1'*), is India's largest newspaper group with 66 editions published in 4 languages. The major newspapers published by the group are Dainik Bhaskar (Hindi daily), Divya Bhaskar (Gujarati daily), Dainik Divya Marathi (Marathi daily), Saurashtra Samachar, DB Post (English daily) and DB Star. The claimant (*here-in-after 'workman'*), a non working journalist, had joined the management on 01.05.2000 as Computer Operator. Keeping in view the sincere and hard work of the workman, she was promoted from the post of Computer Operator to the post of Executive (office) vide office order dated 01.06.2004. Thereafter, the workman was further promoted vide office order dated 14.07.2007 from Senior Executive to In-charge Marketing (Back Office) Grade (E1). Though the management further promoted the workman as Senior Management Associate at M6 Grade vide office order dated 29.07.2015, however, she kept on performing her duties as Senior Executive only without there being any change in the nature of work or her duties. The Government of India has accepted the recommendations of the Majithia Wage Board on 25.10.2011, for revision of wages and allowances of employees in newspaper establishments and news agencies and notified vide S.O. No.2532(E) dated 11.11.2011 in the Gazette of India. As per the recommendations of the Majithia Wage Board Award, the management falls under Class - I of the Newspaper Establishment as its annual turnover is ₹1,000/- crore and above. The Hon'ble Supreme Court of India in the matter of ABP Pvt. Ltd. & Another Versus The Union of India & Others reported as 2014(3) SCC 327 has rejected various challenges by management of various newspapers to the Majithia Wage Board recommendations. In its judgment, the Hon'ble Supreme Court held that the wages as revised/determined shall be payable from 11.11.2011 when the Government of India notified the recommendations of the Majithia Wage Boards. All the arrears up to March, 2014 shall be paid to all eligible persons in four equal installments within a period of one year from today and continue to pay the revised wages from April, 2014 onwards. The workman has been requesting the managements for balance payment but without any fruitful results. The managements have not paid arrears to the workman till date despite the fact that the recommendations of the Majithia have been upheld by the Hon'ble Supreme Court of India and specific directions have been given by the Hon'ble Supreme Court of India for the implementation of the Majithia Wage Board. As per the recommendation of the Majithia Wage Board, the applicant is entitled to ₹ 72,76,646.33/- i.e. arrears from 11.11.2011 to 31.05.2018 along with interest on arrears @ 18% per annum. The detailed statement of account is attached with the claim statement. As such, an amount of ₹ 72,76,646.33/- is still outstanding against the managements. The Hon'ble Supreme Court of India in Contempt Petition (C) No.411/2014 in WP (Civil) No.246/2011 in para No. 28 of the judgment has held as under :-

"Insofar as the writ petitions seeking interference with transfer/termination, as the case may be, are concerned, it appears that the same are relatable to service conditions of the concerned writ petitioners. Adjudication of such question in the exercise of High prerogative

writ jurisdiction of this court under Article 32 of the constitution would not only be unjustified by such questions should be left for determination before the appropriate authority either under the act or under cognate provisions of law (Industrial Disputes Act, 1947 etc.) as the case may be."

3. The Hon'ble Supreme Court of India in Misc. Application No.187 of 2017 in Contempt Petition (C) No.411/2014 in its order had clarified that *"our judgment dated 19.06.2017 to mean that disputes referred for adjudication under Section 17(2) of the Working Journalists and other Newspaper Employees (Conditions of service) and Miscellaneous provisions Act, 1955 will be disposed of by the concerned Labour Court/Tribunal as expeditiously as possible, preferably within six months of this reference being made."* The Hon'ble Supreme Court of India in Writ Petition (Civil) No.330/2017 dated 27.10.2017 has ordered that the present Writ Petition is disposed in terms of the paragraph 28 of the judgment dated June 19, 2017 passed in Contempt petition (Civil) No.411/2014 in Writ Petition No.246 of 2011 and the clarifications made by our order dated October 13, 2017 passed in Miscellaneous Application No.187 of 2017 in Contempt Petition (Civil) No.411 of 2014. Non-payment of arrears thereof to the workman is contemptuous, illegal, mala-fide, in utter violation of judgment passed by the Hon'ble Supreme Court of India. Now, the management has also started victimizing and harassing the workman by resorting to unfair labour practices in as much as the management at first deliberately stopped the payment of performance incentive of the workman for an amount of ₹ 46,519/- and now they have transferred her to Panipat by promoting her as Assistant Manager, which is completely an eyewash and has been done only to punish her for approaching the Court of Law. Due to such an arbitrary, illegal, unjust and mala-fide action, rather inaction on the part of the management the workman has suffered immeasurable mental agonies, financial hardship and physical harassment, which deserves to be compensated in terms of money. The managements also deserve to be saddled with heavy and extra-ordinary costs for resorting to unfair labour practice. Prayer is made that :-

- a) The managements may be directed to pay a balance arrears to the workman amounting to ₹ 72,76,646.33/- i.e. arrears from 11.11.2011 to 31.05.2018 and interest on arrears @18% per annum, as per statement of account attached with the claim statement, till the date of realization;
- b) The managements may be directed to continue to pay the revised wages as per the judgment of the Hon'ble Supreme Court of India.
- c) The managements may be directed to pay the performance incentive for an amount of ₹ 46,519/- to the workman in addition to the above stated amount.
- d) Operation of the transfer order dated 01.10.2018 may be stayed.
- e) The managements may be directed to produce all the records relevant to the case.
- f) The managements may be burden with heavy costs and award compensation to the tune of ₹ 25,000/- to the workman for mental agonies, physical harassment and financial hardship;
- g) Cost of this claim may be allowed;
- h) To pass such other orders, directions and grant such other relief in favour of the workman, as deemed fit, and proper in the facts and circumstances of the case by this Hon'ble Court.

4. On notice, initially management No.1 & 2 appeared through Shri Bijender Sharma - Representative, who filed memo of appearance on 19.09.2018 and later filed authority letter on 05.10.2018. None appeared on behalf of management No.3 to 5. Vide order dated 10.09.2018 the management No.3 to 5 were proceeded

against ex-parte. Thereafter, Shri Naveen Sharma - Representative filed authority letter on behalf of management No. 3 to 5 on 05.12.2018 and were permitted to join the proceedings from that stage. On 26.02.2019 Shri Sunil Kumar Bhardwaj filed authority letter on behalf of management No.1 to 5. It is pertinent to mention here that on 10.09.2018 memo of appearance on behalf of the workman was filed by Representative Shri Gaurav Tangri, who filed authority letter on 05.12.2018. Due to lock-down on account of COVID-19 none of the parties were appearing during the period from 22.03.2020 to 30.09.2020. On 29.10.2020 Learned Representative for the workman appeared but none appeared on behalf of the management. Fresh notice to the management was ordered to be issued for 13.11.2020. On 13.11.2020 Representative Shri Vishal Gupta put in appearance on behalf of the management.

5. Management No.1 to 5 contested the claim statement by filing joint written statement wherein preliminary objections are raised on the ground that the claimant-workman filed the fresh claim petition (*here-in-after 'claim statement'*) claiming the arrears of wages for the period from 11.11.2011 to 31.05.2018 as per the recommendation of the Majithia Wage Board by putting the wrong facts as well as by leveling the false allegations and by presenting the fabricated calculation sheet, before this Tribunal and as such in the present claim statement is liable to be dismissed with exemplary costs. The claimant-workman does not fall under the definition of 'workman' as per Section 2(s) (ii to iv) of the Industrial Disputes Act, 1947 (*here-in-after in referred as 'ID Act'*). The claimant-workman has failed to claim himself as workman as per the provisions of the ID Act. As per the nature as well as status of post, the claimant-workman does not fall within the definition of 'workman' as per Section 2 of the ID Act. The claim statement is liable to be dismissed on account of mis-joinder of necessary party as the alleged service rendered by the claimant-workman with the answering management i.e. Chief Manager, HR (who has not been impleaded as party in the present claim statement) and authorities of Head Office have been impleaded by name. The procedure under the scheme of the Act, aggrieved employees seeking to recover any amount due under the Act is required to first move an application before the State government. As per Rule 36 of the Act, such an application is required to be made in prescribed Form 'C' addressed to the Secretary to the State Government, along with the details of the amount claimed, preceded by a 15 days prior notice regarding payment to the concerned newspaper establishment. In this case, no such application along with the details of the amount claimed, much less in the prescribed format was made to the Secretary of the State Government. No 15 days prior notice was issued by claimant-workman to the management as required under Rule 36 of the Act. Thus, in the absence of fulfilling the conditions precedent for initiating action under Section 17 of the Act, legally no proceedings could have been initiated at the instance of the management against the claimant-workman. Hence, the proceeding in question is void ab-initio. The claim statement is hopelessly time barred. The demand notice in June, 2018 stated to be served upon the management was presented before the Deputy Commissioner, Chandigarh, whereas the Deputy Commissioner was not competent authority as the same was to be presented before the Secretary to Government (Labour Department) as per Section 17 of the Act. The demand notice was referred to the Assistant Labour Commissioner (A.L.C.), U.T. Chandigarh vide order dated 01.02.2018 passed by the Deputy Commissioner, Chandigarh, after considering the reply filed by the answering managements wherein the specific objection is taken that any demand notice is not maintainable before Deputy Commissioner, Chandigarh. It is well settled law that a civil suit does not lie after the expiry of 3 years of the cause of action. In the present case, demand notice was received by A.L.C., U.T. Chandigarh in June, 2018 for the benefit claimed by the claimant-workman for the period 2011-14. The claimant-workman had annexed the calculation sheet showing the turn-over of the management only to get a benefit from the answering managements which is a dispute in question of fact and cannot be decided in summary proceedings before this Tribunal. The dispute in question of fact can only be adjudicated upon by the concerned Civil Court. The basis of computation of the amount claimed by the claimant-workman has not been indicated and revealed by the claimant-workman. Hence, the same is frivolous and baseless. The employees who have signed 20(J) of the Majithia Wage Board recommendations of their own account are not entitled for Majithia Wage Board recommendations and henceforth the claim is liable to be dismissed. The management has fully complied with the provisions of the Majithia Wage Board issued by the Central Government under notification dated 11.11.2011. Mrs. Rachana Sharma had already received the wages as per para 20(j) of the Majithia Wage Board recommendations. The claimant-workman has chosen /

opted to retain her existing wages and existing emoluments as per para 20(j) of the Majithia Wage Board at her own voluntarily. Now nothing is payable to the claimant as she had already received wages according to the option opted by her in para 20(j), which is reproduced as below :-

"20 (j) The revised pay scales shall become applicable to all employees with effect from 1st July, 2010. However, if an employee within three weeks from the date of publication of Government Notification under Section 12 of the Act enforcing these recommendations exercises his option for retaining his existing pay scale and "existing emoluments", he shall be entitled to retain his existing scale and such emoluments."

6. The above mentioned para 20(j) is integral part of Majithia Wage Board recommendations and has full force of law. Answering management has fully paid to applicant as per para 20(j). The claimant had never raised any question nor made any complaint to the management or to the competent authority regarding the undertaking which she had given within specified time of three weeks. Now after lapse of long time she is raising dispute of non-payment of wages as per Majithia Wage Board recommendations which is simply afterthought, illegal and baseless. No complaint can be entertained after passing almost eight years of lapse of prescribed period. On question of validity of 20(j), from 1955 to 2011 six Wage Boards were constituted i.e.

2nd May, 1956 - Dvetia Wage Board (notified on 1957) but Hon'ble Supreme Court has quashed the recommendations.

12th November, 1963 - Sindhiya Wage Board (notified on 27th November, 1967) but the same was quashed by the Hon'ble Supreme Court.

11th June, 1975 - Palekar Wage Board (notified on 26th November, 1980) but the same was implemented as per Clause 10 of the Wage Board.

17th July, 1985 - Bachawat Wage Board (notified on 31st August, 1989).

9th September, 1994 - Manishna Wage Board constituted on 5th December, 2000.

24th May, 2007 - Majithia Wage Board constituted on 24th May, 2007 (notified on 11.11.2011)

7. It is further stated that since year 1956 various wage Boards have been constituted from time to time and the option has been given to the employee to opt for the payment of existing pay scale and existing emoluments in all these aforesaid various wage Boards. When the Majithia Wage Board was finally notified on 11.11.2011, most of the employees opted to sign 20(j) as per their own accord and hence decided to exercise the option for retaining the existing pay scale and existing emoluments. The employees were informed about the option for 20(j) of the Majithia Wage Board recommendations for payment of existing pay scale and existing emoluments by affixing notice on the notice board of the company. The employees have themselves opted to sign 20(j) of the Majithia Wage Board recommendations on their own accord and free will. The allegations that the employees signed 20(j) under the coercion are totally false and baseless. The plea is beyond limitation. The plea of coercion is tenable as the same is foul of principles laid down under Order VI Rule 4 CPC. The employer has paid the wages as per Section 20(j) of the Majithia Wage Board recommendations and no alleged amount of ₹ 72,76,646.00 is due. The claimant-workman has already received her full wages as per para 20(j) of the notification dated 11.11.2011 and para 20(j) being part of the said notification has full force of law and cannot be ignored as provided in Majithia Wage Board recommendations. On this ground also nothing is due. Hence, claim statement is liable to be rejected on the ground that nothing is due of claimant-workman against the organisation. The claim made in the instant claim statement by the claimant-workman is not maintainable under the provisions of the Section 17 of the Act as no amount is due and further the amount as claimed by the workman-claimant is based on non-existing right.

8. Further on merits, it is stated that it is matter of record to the extent of issuance of appointment letter in favour of the claimant-workman. The claimant-workman does not fall within the definition of 'workman' as she was performing the duties under the supervisory capacity as such the claimant-workman ceases to be the 'workman' as per the definition provided in Section 2(s) of the ID Act. The facts that the claimant-workman is a non-working journalist and joined the management on 01.05.2000 as Computer Operator are matter of record and needs no reply. The facts that the claimant-workman was promoted from the post of Computer Operator to the post of Executive (office) vide office order dated 01.06.2004, further promoted vide office order dated 14.07.2007 from Senior Executive to In-charge Marketing (Back Office) Grade (E1) and further promoted as Senior Management Associate at M6 Grade vide office order dated 29.07.2015 are matter of record. The claimant-workman herself presented her statement of promotion which are supervisory in nature. The facts that Government of India has accepted the recommendations of the Majithia Wage Board on 25.10.2011 for revision of wages and allowances of employees in newspaper establishments and news agencies and notified vide S.O. No.2532(E) dated 11.11.2011 in the Gazette of India are matter of record. The claimant-workman is not entitled for the benefit compliance of the judgment passed by the Hon'ble Supreme Court of India as the newspaper does not fall under the category as defined by the claimant-workman. The judgment of Hon'ble Supreme Court of India in the matter of ABP Pvt. Ltd. & Another Versus The Union of India & Others reported as 2014(3) SCC 327 is a matter of record and the claimant-workman is not entitled for any arrears etc. The calculation sheet attached by the claimant-workman is not verified / authenticated by the claimant-workman. The calculation sheet is prepared on the wrong facts and erroneously and the same is not countable in the present claim statement. The judgment of Hon'ble Supreme Court of India in Contempt Petition (C) No.411/2014 in WP (Civil) No.246/2011 is a matter of record and needs no reply. The judgment of Hon'ble Supreme Court of India in Misc. Application No.187 of 2017 in Contempt Petition (C) No.411/2014 is a matter of record. The order passed by Hon'ble Supreme Court of India in Writ Petition (Civil) No.330/2017 dated 27.10.2017 is a matter of record and needs no reply. The claimant-workman is not entitled for any arrears and the amount of ₹ 46,519/- as per month salary is based on wrong facts. The claimant-workman is not entitled for any of the benefits as claimed in para 16 from (a) to (h) of claim statement. The issue arose in para 16(d) is already sub-judice before the present Tribunal. Rest of the averments of claim statement are denied as wrong and prayer is made that the claim statement may be dismissed with exemplary costs, in the interest of justice.

9. The workman filed replication, wherein the contents of written statement except the admitted facts of the claim statement, are denied as wrong and the averments of the statement of claim are reiterated.

10. From the pleadings of the parties, following issues were framed vide order dated 15.04.2019 :-

1. Whether the arrears of revision of pay to Ms. Rachna Sharma were to be paid by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
2. Whether Ms. Rachna Sharma does not fall under the definition of 'workman' as defined under Section 2(s) of the ID Act ? OPM
3. Whether the claim of Ms. Rachna Sharma is bad on the ground of mis-joinder of necessary party ? OPM
4. Whether the claim of Ms. Rachna Sharma is time barred ? OPM
5. Whether the claim of Ms. Rachna Sharma is not maintainable under the provisions of Section 17 of the Working Journalists & Other Newspaper Employees (Condition of Services) and Miscellaneous Provisions Act, 1955 ? OPM
6. Relief.

11. In evidence, workman Mrs. Rachana Sharma examined herself as AW1 and tendered her affidavit Exhibit 'CW1/A' along with documents Exhibit 'C1' to Exhibit 'C6'.

Exhibit 'C1' is copy of appointment letter dated 01.05.2020 whereby the workman was appointed by the management as Computer Operator in EDP Department of Chandigarh Office.

Exhibit 'C2' is copy of letter dated 01.06.2024 issued by Chief Manager, HRD Chandigarh of Dainik Bhaskar whereby the workman was promoted from the post of Computer Operator to Executive (Office).

Exhibit 'C3' is copy of letter dated 04.07.2007 issued by AGM (State Coordinator - HR) CPH of Dainik Bhaskar whereby the workman was promoted from Sr. Executive to Incharge - Marketing (Back Office), Grade (E1).

Exhibit 'C4' is the copy of letter dated 29.07.2015 relating to the subject of annual appraisal report for the financial year 2014-15 of workman whereby she was promoted as Senior Manager Associate at M6 Grade and her annual compensation structure was revised as ₹ 2,13,444/- effect from April 1st, 2015.

Exhibit 'C5' is copy of notification vide S.O. no.2532(E) dated 11.11.2011 issued by Govt. of India, Ministry of Labour & Employment regarding the recommendations of the Majithia Wage Board which were accepted by the Government of India on 25th October, 2011.

Exhibit 'C6' is copy of the details of calculation accompanied with calculation sheet of estimated gross salary as per Majithia Wage Board relating to workman.

12. The workman examined AW2 Dhruv Gupta - Chartered Accountant, who tendered his affidavit Exhibit 'AW2/A' along with documents Exhibit 'AW2/1' to Exhibit 'AW2/8'.

Exhibit 'AW2/1' is copy of the pay slip for the month of April, 2013 issued by DB Corp. Ltd. related to workman Rachna Sharma.

Exhibit 'AW2/2' is copy of the pay slip for the month of January, 2014 issued by DB Corp. Ltd. related to workman Rachna Sharma.

Exhibit 'AW2/3' is copy of the pay slip for the month of March, 2015 issued by DB Corp. Ltd. related to workman Rachna Sharma.

Exhibit 'AW2/4' is copy of the pay slip for the month of April, 2016 issued by DB Corp. Ltd. related to workman Rachna Sharma.

Exhibit 'AW2/5' is copy of the pay slip for the month of May, 2018 issued by DB Corp. Ltd. related to workman Rachna Sharma.

Exhibit 'AW2/6' to Exhibit 'AW2/8' are copies of balance sheet of DB Corp. Ltd. for the period 2007-08, 2008-09 and 2009-10 respectively.

13. On 04.08.2022 workman closed her oral evidence. On 15.05.2023 Learned Representative for the workman evidence of the workman in affirmative.

14. On the other hand, management examined MW1 Avdhesh Gaur - Assistant Manager, HR Admin, O/o Dainik Bhaskar, Chandigarh, who tendered his affidavit Exhibit 'MW1/A' along with documents Exhibit 'M1', Exhibit 'M2' and Mark 'A'.

Exhibit 'M1' is copy of identity card of Avdhesh Gaur.

Exhibit 'M2' is authority letter dated 01.01.2023 issued by DB Corp. Ltd. in favour of Avdhesh Gaur.

Mark 'A' is copy of declaration form dated 16.11.2011.

15. On 12.12.2023 Learned Representative for management closed oral evidence. On 29.04.2024 Learned Representative for the management closed documentary evidence.

16. I have heard the arguments of Learned Representatives for the parties and perused the judicial file. My issue-wise findings are as below :-

Issues No. 1 & 2 :

17. Both these issues are taken up together being interconnected and in order to avoid repetition of discussion.

18. Onus to prove issue No.1 is on the workman and onus to prove issue No.2 is on the management.

19. In order to prove the entitlement of the workman to the arrears of pay on the basis of Majithia Wage Board recommendations notified on 11.11.2011 by the Government of India, workman Rachana Sharma examined herself as AW1 and vide her affidavit Exhibit 'CW1/A' deposed the averments of claim statement in toto, which are not reproduced here for the sake of brevity. AW1 supported her oral version with documents Exhibit 'C1' to Exhibit 'C6'.

20. In order to prove the calculation of the amount due from the management, the workman examined AW2 Dhruv Gupta - Chartered Accountant, who vide his affidavit Exhibit 'AW2/A' deposed that he is a Chartered Accountant by Profession and Partner of the DGR & Associates firm. DGR & Associates is a Firm of Chartered Accountants having its Office at 66, Venkateshwar Colony, New Sanganer Road, Sodala, Jaipur, Rajasthan - 302019. The claimant Rachna Sharma had approached him and told him that she was working with DB Corp Ltd. and she wanted to claim the arrears due from the respondents as per the Majithia Wage Board Award. The claimant-workman asked him to prepare a report and a chart of arrears payable to her as per revised Scales of Wages recommended by the Majithia Wage Board and as per Notification dated 11.11.2011 issued by the Govt. of India. The claimant-workman supplied him her appointment letter, her promotion orders, salary slips and copy of Govt. Notification dated 11/11/2011 and other details. He further deposed that he had carefully gone through the service conditions set out in the appointment order, promotion orders her total annual wages and monthly wages, pay slips and appraisal letters and other details provided to him by the claimant-workman and have also carefully gone through the Govt. Notification dated 11/11/2011 and the Recommendations of the Majithia Wage Board Award and after considering the above documents and provisions made in the Govt. of India Notification dated 11/11/2011, he have prepared his report and chart of calculations of Estimated Gross Salary/Wages Payable to the claimant-workman/employee along with interim relief as per the Majithia Wage Board. The calculations of Revised Scale of Wages have been made by him as per the directions and guidelines mentioned in Clause No. 3 to 22 of the Notification dated 11/11/2011. The respondent-management is running the Newspaper Establishments across the country under the name Dainik Bhaskar Corporation Ltd. i.e. DB.Corp. Ltd.) and having its Registered Office at Plot No. 280, Savkhej, Gandhi Nagar Highway, Near YMCA Club, Ahmedabad, Gujrat-380051 and having its Newspaper Establishment Unit at Plot No. 11-12, Dakshin Marg Sector 25, Chandigarh-160036. The Newspaper Establishments are classified in Class I to VIII on the basis of their gross revenue and same are stated at Clause No. 6 in Section-II at Page No.13 of the Wage Board Recommendations of the Govt. Notification dated 11/11/2011. The balance sheets for the said period i.e. 2007-08, 2008-09 & 2009-10 as obtained from the website of the Ministry of Corporate Affairs, Govt. of India are annexed. He further deposed that the wages payable to the claimant-workman as per Revised Pay Scale from 11.11.2011 to 31.05.2018 comes ₹ 51,22655/-. The claimant-workman has earned wages from 11.11.2011 to 31.05.2018 of ₹ 13,04,561/-. The arrears of wages (i.e. Difference excluding interest) to be received by the claimant-workman comes to ₹ 38,18,093/-. As per his knowledge the

amount of arrears of ₹ 38,18,093/- has not been paid to the claimant-workman, hence he has made calculations of interest @ 18% per annum compounding quarterly from 11.11.2011 till 31.05.2018 which comes to ₹ 72,76,646/- including interim relief. In order to prove the basis of the calculation AW2 placed on record the documents Exhibit 'AW2/1' to Exhibit 'AW2/8'.

21. On the other hand, to controvert the evidence led by the workman, the management examined MW1 Avdhesh Gaur - Assistant Manager (HR & Admin) of DB Corp. Ltd., who vide his affidavit Exhibit 'MW1/A' deposed that he is working as Assistant Manager (HR & Admin) with the respondents and has been authorised by the respondent to depose on its behalf in the above said case before this Court. He is well conversant with the facts of the present case. He further deposed that DB Corp. Ltd. is a group of business including textile, MY FM, Digital Media, Real estate, power, denim. As per Majithia Wage Board recommendation only the business of newspaper establishment i.e. circulation and advertisement of newspaper shall be counted and all the units have independent existence and the accounts of each unit are being prepared by that unit. He further deposed that the claimant-workman does not fall under the definition of 'workman' as per Section 2(s) (ii to iv) of the ID Act. The claimant had also failed to claim himself as workman as per the provisions of the ID Act. As per nature as well as status of post Senior Management Associate, the claimant-workman does not fall within the definition of 'workman' as per Section 2 of the ID Act. He further deposed that it is a settled law that a civil suit does not lie after the expiry of 3 years of the cause of action and in the present case, the demand notice was received by the Assistant Labour Commissioner, Chandigarh, in February, 2018 for the benefit claimed by the claimant for the period 2011-14. The claimant-workman is not entitled for the benefit of the compliance of judgment passed by the Hon'ble Supreme Court of India as prior to passing of judgment by the Hon'ble Apex Court. The respondent-management has fully complied with the provision of Majithia Wage Board issued by the Central Government under notification dated 11.11/2011. The claimant-workman had already received the wages as per para 20(j) of the Majithia Wage Board recommendations. The claimant-workman has chosen / opted to retain his existing wages and existing emoluments as per para 20(j) of the Majithia Wage Board at his own voluntarily by signing a declaration dated 15.11.2011 and after signing the declaration, now nothing is payable to the applicant as she has already received wages according to option opted by her of para 20(j) and opted to retain her current salary and emoluments at that time. All the employees working have given their signatures on option letter as per their will and submitted it to the management. MW1 supported his oral version with documents Exhibit 'M1', Exhibit 'M2' and Mark 'A'.

22. It is undeniable fact of parties that the services of the workman were governed under the Working Journalists & Other Newspaper Employees (Condition of Service) and Miscellaneous Provisions Act, 1955. From the oral as well documentary evidence led by the parties and from the pleadings, it emerges that admittedly the workman was appointed vide appointment letter Exhibit 'C1' and she had joined the management on 01.05.2000 as Computer Operator. It is also admitted fact of the parties that the workman was promoted from the post of Computer Operator to the post of Executive (office) vide office order dated 01.06.2004 / Exhibit 'C2' and further promoted vide office order dated 14.07.2007 from Senior Executive to In-charge Marketing (Back Office) Grade (E1) vide Exhibit 'C3' and then promoted as Senior Management Associate at M6 Grade vide office order dated 29.07.2015 / Exhibit 'C4'. Learned Representative for the workman argued that though the workman was promoted as Senior Management Associate but she kept on performing her duties as Senior Executive only without there being any change in the nature of work or her duties. On the other hand, Learned Representative for the management argued that the claimant-workman herself presented her statement of promotions which were supervisory in nature. Since, the claimant-workman was performing the duties under the supervisory capacity as such the workman ceased to be a 'workman' as per the definition under Section 2(s) of the ID Act. To support his arguments Learned Representative for the management referred cross-examination of MW1 wherein he has denied the suggestion as wrong that the workman was promoted as Senior Management Associate, yet she was performing her duties as Senior Executive. To my opinion, the argument advanced by Learned Representative for the management that claimant-workman does not fall within the definition of 'workman' as defined in Section 2(s) of the ID Act is devoid of merit because as per the judgment of Hon'ble Apex Court titled as *Anand Regional Coop. Oil Seedsgrowers' Union*

Limited Versus Shaileshkumar Harshadbhai Shah, reported in 2006 SCC (L&S) 1486, referred by Learned Representative for the workman, which is applicable to the facts of the present case to an extent, mere designation of the post held by an employee is not the only determining factor as to whether he is a 'workman' as defined under Section 2(s) of the ID Act or not. Main and dominant nature of duties performed by the employee would be the determining factor. What are the prime duties he performs is to be seen. As already discussed above, workman has alleged that she was performing duties as Senior Executive only. On the other hand, the management did not elaborate as to what kind of administrative, managerial or supervisory duties were performed by the workman. It is neither pleaded nor proved into evidence that the claimant-workman had the power to make temporary appointments, grant leave and initiate disciplinary proceedings etc. Thus, it is concluded that the workman was not performing any administrative, managerial or supervisory duties and falls within the definition of 'workman' as defined under Section 2(s) of the ID Act.

23. Learned Representative for the workman argued that in view of the Majithia Wage Board recommendations notified on 11.11.2011 / Exhibit 'C5' claimant-workman is entitled to arrears of pay for the period 11.11.2011 to 31.05.2018 as detailed in the calculation sheet Exhibit 'C6' prepared by Chartered Account Dhruv Gupta examined as AW2. On the other hand, Learned Representative for the management argued that the workman has voluntarily exercised option to retain her existing pay scale and existing emoluments under para 20(j) of Majithia Wage Board recommendations by signing a declaration dated 16.11.2011 / Mark 'A'. The management has fully paid wages to the claimant-workman as para 20(j) of Majithia Wage Board recommendations. Moreover, the claimant-workman had never raised any question nor made any complaint to the management or to any competent authority regarding the undertaking given by her in the form of declaration Mark 'A'. To my opinion, as far as declaration dated 16.11.2011 / Mark 'A' is concerned, the same is not sufficiently proved into evidence as the original of declaration dated 16.11.2011 is not produced into evidence. Furthermore, declaration dated 16.11.2011 is not put to the claimant-workman / AW1 in her cross-examination which deprived the opportunity to the claimant-workman to admit or deny the same. It is not proved by the management that before obtaining options under para 20(j) of Majithia Wage Board recommendations from its employees, any public notice was affixed on the notice board to inform or appraise the employees to submit a declaration. Moreover, in para 9 of replication, in reply to preliminary objections the claimant-workman has pleaded that she never chose / opted to retain her existing wages and existing emoluments as per para 20(j). The claimant-workman further pleaded that the alleged undertaking was got signed by the management under pressure and without disclosing the contents of the same to the claimant in the year 2015. The said undertaking is totally involuntarily and in any case the wages fixed by the wage board will prevail over any such undertaking. Learned Representative for the workman referred the unreported **judgment dated 22.04.2024 passed by the Hon'ble High Court of Madhya Pradesh at Jabalpur in Misc. Petition No.5093 of 2022 between Dainik Bhaskar and the State of Madhya Pradesh & Others**. In the said judgment the claimant-workman is impleaded as respondent and Dainik Bhaskar through its authorised Representative is petitioner. In para 15, 16 and 26 of the judgment (supra) it has been held as below :-

"15. Thus, the burden that the declaration was given voluntarily by the respondent is upon the petitioner. Although it is the stand of the Petitioner that a public notice was affixed on the notice board that the employees has to submit a declaration in the light of clause 20(j) of Majithia Wage Board, but the Petitioner has miserably failed to prove that the employees were informed about the recommendations of the Majithia Wage Board and only after understanding the same, the respondent had voluntarily signed the declaration form. There is nothing on record that even the recommendations of the Majithia Wage Board were also affixed on the notice board, so that the respondents and others can go through the same. The petitioner being the employer was undoubtedly in a dominating position as it has every power to terminate the service or regulate the service conditions of the respondent.

16. *Under these circumstances, this Court is of the considered opinion, that the Petitioner has miserably failed to discharge its burden to prove that the respondent had voluntarily executed the declaration under clause 20(j) of the Majthia Wage Board.*
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26. *Similarly, if an employer pays less than the Minimum Wages, then such an act of the employer would be punishable under Section 22 of the Minimum Wages Act. Thus, if the contention of the Petitioner, that if a declaration has been made by an employee under Clause 20(j) of Recommendations of Majthia Wage Board and agrees to work on a lesser pay than what was recommended by the Majthia Wage Board is accepted, then it would amount to permitting the employer to pay lesser wages than the Minimum Wages. Therefore, what is otherwise an offence and violative of Art. 23 of the Constitution of India, cannot be legalize under Clause 20(j) of recommendations Majithia Wage Board. Further any interpretation which leads to legalize an act which otherwise is an offence should always be avoided. Thus, only that declaration can be said to be a valid declaration under Clause 20(j) of recommendations of Majthia Wage Board if it is in favour of the employee and not detrimental to his interest. Therefore, the contention of the petitioner that the respondent had given a declaration thereby expressing his satisfaction over the pay scale which was given to him cannot be accepted, and it cannot be held that the respondent was estopped from claiming higher pay scale as recommended by Majithia Wage Board."*

24. Learned Representative for the workman referred another unreported **judgment dated 27.04.2023 of Hon'ble High Court of Uttra Pradesh at Lucknow passed in Writ-C No.10419 of 2023 titled as M/s Jagran Prakashan Limited Versus Sh. Amar Kumar Singh & 3 Others and Writ-C No.23212 of 2021 titled as M/s Jagran Prakashan Limited Versus Krishan Lal & 4 Others**, wherein in para 31, 33 and 35, it has been held as below :-

- "31. *It is well settled that the Act, a piece of socio beneficial legislation enacted with a view to give reasonable working conditions to the employees of the newspaper establishment, needs to be interpreted in a manner, which leads to achieve the purpose for which the Act was enacted. The provisions of Clause 20(J) read with Section 13 and 16 have to be interpreted harmoniously to ensure that none of the provisions are rendered otiose.*
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33. *The argument of the counsel for the petitioner in the light of the provisions of Clause 20(J), if accepted, would render the entire Act inapplicable and if the said argument is accepted, the same would be in clear violation of the mandate of Section 12, 13, 13-C, 13-D and Section 16 of the Act.*
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35. *It is further inconceivable as to why the employee would agitate for the wages and emoluments by instituting proceedings under Section 17 if he was getting more amounts than what was prescribed by the wage board, it is equally inconceivable as to why any newspaper establishment would contest such proceedings if they felt that the wages and emoluments paid to an employee under an agreement are more than the recommendations of the board."*

25. The above referred judgments are applicable to the facts of the present case to an extent and accordingly the declaration under Clause 20(j) of Majithia Wage Board recommendations / Mark 'A' cannot be said to be a valid declaration and it does not operate as a bar to the claimant-workman to claim higher pay scale as recommended by Majithia Wage Board / Exhibit 'C5'.

26. Learned Representative for the management argued that the claimant-workman has failed to prove into evidence the income of the DB Corp. Limited from the circulation and advertisement of the newspaper. The gross income of DB Corp. Limited from its other business of textile, My FM, digital media, real estate, power, event management and denim etc. cannot be taken into consideration. In the absence of independent income of the management from circulation and advertisement of the newspaper, the calculation sheet based upon gross revenue of DB Corp. i.e. balance sheet Exhibit 'AW2/6' to Exhibit 'AW2/8' cannot be considered. To my opinion, Dainik Bhaskar is responsible to maintain the record of income from circulation and advertisement of newspaper. The claimant-workman is not supposed to be in possession of any record of income and expenditure or balance sheet of the income of Dainik Bhaskar from circulation and advertisement of newspaper. MW1 when put to cross-examination stated that he cannot tell in how many cities DB is being published. He cannot tell the gross revenue of DB Corp. from advertisement, circulation, MyFM, real estate, power and denim. In the present case, the workman filed an application for issuing direction to the management to produce the record i.e. i) complete service record of claimant-workman; ii) balance sheet of newspaper DB Corp. Ltd. for the financial years 2007-08, 2008-09 and 2009-10. The management contested the application by filing written reply. Vide order dated 26.04.2021 passed by the Learned Predecessor of this Court direction was issued to the management to produce the above mentioned record. On 18.10.2021 Shri Avdhesh Gaur made statement that he has not brought the summoned record today and will bring the same on the next date of hearing. Thereafter, again numerous opportunities were availed but the record was not produced by the management. On 25.04.2022 direction was issued to the management to produce the record as mentioned in application dated 29.05.2019 disposed off vide order dated 26.04.2021. Again management availed numerous opportunities but failed to produce the record. Ultimately on 24.04.2023 Shri Avdhesh Gaur - Assistant Manager (HR & Admin) placed on record his sworn-in affidavit accompanied with photocopy of balance sheet as on 31.03.2008, 31.03.2009 and 31.03.2010 of Dainik Bhaskar, Chandigarh. In the affidavit it is deposed that the file containing the service record of claimant-workman has been misplaced and the same is not traceable at this stage. It is further deposed that respondents are in the process of re-constructing the service record of the claimant and shall submit the same as soon as the file is reconstructed by the respondent. The balance sheet of the newspaper DB Corp. for the financial year 2007-08, 2008-09 and 2009-10 is maintained at the Head Office situated at Bhopal, M.P. and the same can be summoned from Head Office at Bhopal. Vide order dated 24.04.2023 this Court gave observation that in view of the aforesaid submission made in the affidavit, appropriate inference for non-production of record shall be drawn at the appropriate stage of the case. In this case, till the conclusion of arguments the management failed to produce the alleged reconstructed service record of the claimant and failed to comply with the direction issued vide order dated 26.04.2021 to produce the balance sheet of newspaper DB Corp. for the financial year 2007-08, 2008-09 and 2009-10. Under the circumstances mentioned above, due to non-production of record as directed vide order dated 26.04.2021 adverse inference stands drawn against the management. The management has failed to controvert that the revenue of the management of Dainik Bhaskar Newspaper is more than ₹ 1,000 Crores.

27. In view of the discussed made above, the claimant-workman falls within the definition of 'workman' as defined under Section 2(s) of the ID Act and is entitled to recover arrears of difference of pay for the period from 11.11.2011 to 31.05.2018.

28. Accordingly, issue No.1 is decided in favour of the claimant-workman and against the management. Issue No.2 is decided against the management and in favour of the claimant-workman.

Issue No. 3 :

29. Onus to prove this issue is on management. During course of arguments this issue is not pressed by management.

30. Accordingly, this issue is decided against management and in favour of the claimant-workman.

Issue No. 4 :

31. Onus to prove this issue is on the management.

32. Learned Representative for management contended that the claim statement is time barred. A Civil Suit does not lie after the expiry of three years of the cause of action. In the present case, the demand notice / claim application filed by the workman before the Assistant Labour Commissioner, Chandigarh in June, 2018 for the benefit claimed by the claimant-workman for the year 2011 to 2019. On the other hand, Learned Representative for the workman argued that the workman is seeking his revised pay w.e.f. 01.11.2011, amount of interim relief and arrears of pay with interest @ 18% per annum as per the award given on the recommendations of Majithia Wage Board. On every passing month, the claimant was getting less salary than his due entitlement and on every month a fresh cause of action had arisen in favour of the workman. Whereas the reference to this Tribunal was made by the Secretary Labour, Chandigarh Administration on 13.07.2018. Thus, the claim of the workman is well within time in as much as the cause of action in the present case is reoccurring in nature.

33. As proved from the documents on judicial file, the workman raised the application demanding wages as per the Majithia Wage Board Award before the Labour Commissioner, U.T. Chandigarh on 13.06.2018 and the Worthy Secretary Labour, Chandigarh Administration under Section 17(2) of the Act 1955 referred to present dispute for adjudication to this Tribunal / Court vide reference dated 13.07.2018 bearing endorsement dated 27.07.2018. Moreover, the contention raised by Learned Representative for the workman carries force as denial of revision of pay and benefits of arrears of pay is a continuing cause giving rise to a recurring cause of action. Therefore, the bar of limitation does not apply.

34. Accordingly, this issue is decided against management and in favour of the workman.

Issue No. 5 :

35. Onus to prove this issue is on the management.

36. Learned Representative for the management argued that the present claim statement is not maintainable under Section 17 of the Act as no amount is due and the amount claimed is based on non-existing right. To my opinion, the argument advanced by Learned Representative for the management is devoid of merits in view of Section 8 of the Act, which reads as below :-

"8. Fixation or revision of rates of wages.-{1} *The Central Government may, in the matter hereinafter provided.-*

(a) *fix rates of wages in respect of working journalists;*

(b) *revise, from time to time, at such intervals as it may think fit, the rates of wages fixed under this section or specified in the order made under section 6 of the Working Journalists (Fixation of Rates of Wages) Act, 1958 (29 of 1958).*

- (2) *The rates of wages may be fixed or revised by the Central Government in respect of working journalists for time work and for piece work."*

37. In view of the aforesaid provision of the Act, the claimant-workman is entitled to the wages fixed under Majithia Wage Board recommendations. As far as the relief claimed under Section 17 of the Act is concerned, in the **judgment dated 27.03.2023 of Hon'ble High Court of Uttra Pradesh at Lucknow passed in Writ-C No.10419 of 2023 and Writ-C No.23212 of 2021 (supra)**, which is applicable to the facts of the present case to an extent, it has been held in para 30 as below :-

"30. The argument of the counsel for the petitioner is that once the respondents have accepted the wages, emoluments and benefits as were existing by giving an undertaking, they are precluded from raising a claim under Section 17 of the Act, merits rejection for the sole reason that the Clause 20(j) of the Wage Board has to be read in context with the explanation under Clause 20(j) read with Section 13 and 16 of the Act."

38. Accordingly, this issue is decided against the management and in favour of the claimant-workman.

Relief :

39. In the view of foregoing finding on the issues above, this reference is allowed and answered in favour of the workman to the effect that the workman is held entitled to the wages for the period from 11.11.2011 to 31.05.2018 as per the Majithia Wage Board recommendations after deduction of wages drawn by him during the said period. The management is directed to comply with the award within three months from the date of publication of the same in Government Gazette failing which the management is liable to pay interest at the rate 8% per annum on the amount of consequential benefits from the date of this award till its actual realisation. Appropriate Government be informed. Copy of this award be also sent to Learned District Judge, Chandigarh in view of Sub-section 10 of Section 11 of the Industrial Disputes (Amendment) Act, 2010 for onward transmission of the same to concerned Civil Court. File be consigned to the record room.

(Sd.) . . . ,

(JAGDEEP KAUR VIRK)

PRESIDING OFFICER,

Industrial Tribunal & Labour Court,

Union Territory, Chandigarh.

UID No. PB0152.

Dated : 30.04.2024.

Secretary Labour,
Chandigarh Administration.

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Notification

The 1st August, 2024

No. 121 E.I./V.B.—Sh. Suresh Kumar, Superintendent Grade-I of the Punjab and Haryana High Court at Chandigarh has retired from the service of this Hon'ble Court w.e.f. 31.07.2024 (A.N.) on attaining the age of superannuation i.e. 58 years.

(Sd.) . . .,

(ASHISH KUMAR BANSAL),
Registrar (Administration),
for Registrar General.

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